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International Court of Justice

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Correction of transcript - 18 Mar - A

Official transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on 18 March 1946, 1445-1700, Lord Justice Lawrence, presiding.

Page numbers 6054-55-56-57 will be preceded by the letter A.

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Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 20 March 1946, 1025 to 1300 hours, Lord Justice Lawrence presiding.

MR. JUSTICE JACKSON: If the Tribunal please, the last question which I asked last night referring to mobilization preparations in the Rhineland, as shown in the official transcript, was this, "But of a character which had to be kept entirely secret from foreign powers?" The answer was, "I do not believe I can recall the publication of the preparations of the United States for mobilization."

Now, representing the United States of America, I am confronted with these choices -- to ignore that remark and to allow it to stand for people who do not understand our system, or to develop at considerable expense of time, its falsity, or to answer it in rebuttal. The difficulty arises from this, Your Honor, that if the witness is permitted to volunteer statements in cross-examination there is no opportunity to make objection until they are placed on the record. Of course, if such an answer had been indicated by a question of Counsel, as I respectfully submit would be the orderly procedure, there would have been objection; the Tribunal would have been in a position to discharge its duty under the Charter and I would have been in a position to have shortened the case by not having that remark placed.

The Charter in Article 18 provides that the Tribunal shall rule out irrelevant issues of any kind whatsoever. We are confronted with that question; we cannot discharge those duties if the Defendant is to volunteer these statements without questions which bring them before them. I respectfully submit that if the ruling of the Tribunal that the Defendant may volunteer answers of this kind is to prevail, the control of these proceedings is put in the hands of this Defendant and the United States has been substantially denied its right of cross-examination under the Charter, because cross-examination cannot be effective under this kind of procedure. Since we cannot anticipate, we cannot meet --

THE PRESIDENT: I quite agree with you that any reference to the United States' secrecy with reference to mobilization is entirely irrelevant, and that

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the answer ought not to have been made, but the only rule which the Tribunal can lay down generally is the rule -- already laid down -- that the witness must answer, if possible, yes or no, and that he may make such explanations as may be necessary after answering questions directly in that way, and that such explanations must be brief and not be speeches. As far as this particular answer goes, I think it is entirely irrelevant.

MR. JUSTICE JACKSON: I must, of course, bow to the ruling of the Tribunal, but it is the second part. I quite recall the admonition of the Court that there shall be answers yes or no. This witness, of course, made not the slightest pretension of that, and I must say that I can't blame him: He is pursuing his interests. But we have no way of anticipating, and here we are confronted with this statement in the record, because when these statements are volunteered they are in the record before the Tribunal can rule upon them and I have no opportunity to make objections -- and the Tribunal have no opportunity to rule. And it puts, as I said before, the control of these proceedings in the hands of the Defendant, if he first makes the charges and then puts it up to us to ignore them, by long cross-examination or answer them in rebuttal; and I think the specific charge made against the United States of America from the witness-stand presents that.

Your Honor now advises the United States that it is a proper answer, but it is in the record and we must deal with it. I respectfully submit that unless we have --

THE PRESIDENT: What objection are you making? Are you asking the Tribunal to strike the answer out of the record?

MR. JUSTICE JACKSON: Well, no; in a trial of this kind, where propaganda is one of the purposes, striking out does no good after the answer is made, and Goering knows that as well as I. The charge has been made against the United States and it is in the record. I am now moving that this witness be instructed that he must answer my questions yes or no if they permit an answer, and that the explanation be brought out by his Counsel in a fashion that will permit us to make objections if they are irrelevant and to obtain rulings of the Tribunal so that the Tribunal can discharge its functions of ruling out irrelevant issues and statements of any kind whatsoever. We must not let the trial degenerate into

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a bickering contest between Counsel and the witness. That is not what the United States expects. I respectfully suggest that if he can draw any kind of challenge --

THE PRESIDENT: Are you submitting to the Tribunal that the witness has got to answer every question yes or no and wait until he is re-examined for the purpose of making any explanations at all?

MR. JUSTICE JACKSON: I think that is the rule of cross-examination under ordinary circumstances. The witness, if the question permits it, must answer, and that if there are relevant explanations they be reserved until later.

Now let me come back to the specific problem I have right here this morning. Here is an answer given which the Tribunal now rules is irrelevant. But we have no opportunity to object to it. The Tribunal had no opportunity to rule upon it. The witness asks, "Did you ever hear of the United States publishing its plan of mobilization?" Of course, we would have objected. The difficulty is that the Tribunal loses control of these proceedings if the Defendant in a case of this kind, where we all know propaganda is one of the purposes of the Defendant, is permitted to put his propaganda in, and then we ask to meet it afterwards. I really feel that the United States is deprived of the opportunity of the right of cross-examination if this is the procedure.

THE PRESIDENT: Surely it is making too much of a sentence of the witness's, whether the United States makes its orders for mobilization public or not. Surely that is not a matter of very great importance. Every country keeps certain things secret. Certainly it would be much wiser to ignore a statement of that sort. But as to the general rule, the Tribunal will now consider the matter. I have already laid down what I believe to be the rule and I think with the assent of the Tribunal, but I will ascertain --

MR. JUSTICE JACKSON: Let me say that I agree with Your Honor that as far as the United States is concerned we are not worried by anything the witness can say about it -- and we expected plenty. The point is, Do we answer these things or leave them, apart from the control of the trial? And it does seem to me that this marks the beginning of this trial's getting out of hand, if I may say so, if we do not have control of this situation. I trust the Tribunal will pardon my earnestness in presenting this. I think it is a very vital thing.

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THE PRESIDENT: I have never hear it suggested that the Counsel for the Prosecution have to answer every irrelevant observation made in cross-examination.

MR. JUSTICE JACKSON: That would be true in a private litigation, but I trust the Court is not unaware that outside of this courtroom is a great social question of the revival of Nazism and that one of the purposes of the Defendant Goering -- I think he would be the first to admit -- is to revive and perpetuate it by propaganda from this trial.

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THE PRESIDENT: Yes, Doctor Stahmer?

DR. STAHMER: I just wanted to explain the following: The accusation has been made as if we intended to make propoganda here for Naziism or in any other direction. I don't think this accusation is justified. Neither do I believe that the defendant intended to make an accusation against the United States. I believe we have to consider the question that was put to him. That is, it was pointed out to him by the Prosecution that this document which was submitted to him was designated "secret." Then he stated hat he had never read or heard that a document of that kind would have been made public in the United States. If he would have just said any other nation, then this thing would have been considered harmless.

In my opinion the answer was quite justified. The witness should be given the possibility not only to answer by yes or no, but to give reasons for his answer, such as the Court has ruled.

THE PRESIDENT: Mr. Justice Jackson, the Tribunal considers that the rule which it has laid down is the only possible rule and that the witness must be confined strictly to answering the question directly where the question admits of a direct answer, and that he must not make his explanation before he gives a direct answer, but after having given a direct answer to any question which admits to a direct answer, he may make a short explanation, and that he is not to be confined simply to making the direct answer yes or not and leaving the explanation until his counsel puts it to him in redirect examination.

As to this particular observation of the defendant, the defendant ought not to have referred to the United States, but it is a matter which I think you might well ignore.

MR. JUSTICE JACKSON: I shall bow to the ruling, of course.

I wish to make a statement to the Tribunal about one of the documents. At the conclusion of the session yesterday we were considering Document EC 405. The defendant Goering challenged the use of a word which he said should have been translated "clearance" rather than "liberation." We have since had the translation checked and find that the defendant is correct. This document was introduced under the number GB 160 on the 9th of January, at page 2396 of the Tribunal's records, and since it has already been received in evidence and it is before the Tribunal, we think it is incumbent upon the Prosecution to make that correction now for the record.

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HERMANN GOERING, resumed.

CROSS-EXAMINATION (CONTINUED) BY MR. JUSTICE JACKSON:

Q You stated yesterday that the minutes of the Reich Defense Counsel with which you were presented were not minutes of a meeting of the Reichs Defense Counsel as such?

A Yes, I have said that.

Q And your testimony, notwithstanding that document, still stands, I take it, that the Reichs Defense Counsel never met?

A I said that also, yes.

Q I now ask to have you shown a document which has just come to our possession -- the minutes of the second session of the Reichs Defense Counsel. I should have said just come to our translation. We haven't had it translated; we just discovered it among our great collection of documents.

THE PRESIDENT: Could Doctor Stahmer have a copy in English or not?

MR. JUSTICE JACKSON: We haven't even had a chance to get it into English. I don't know what it says except that it is the minutes of their meeting.

BY MR. JUSTICE JACKSON:

Q Are those not the minutes of the meeting of the Reichs Defense Counsel held on the 23rd of June 1939?

A I have to read it first.

Q I call your attention to the fact that the chairman is Minister President General Fieldmarshal Goering. You will find that on page 1.

A I have never disputed that. It was never disputed. It was fixed by law. This deals with the second Reichs Defense Counsel, not the first one. Besides, I didn't take part in this meeting; and I point out that on the left the offices are listed and which representatives took part, and in my case it says "Minister President Fieldmarshal Goering," and as participant for him, on the right, "State Secretary Koerner and State Secretary Neumann." But it may be I have to read the document first in order to find out whether I took part personally.

Q Does it not say on page 1, directly under the place of meeting, "Chairman: Minister President Goering"?

A Yes. I have to read it first.

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Q Do you deny the authenticity of those minutes?

A I haven't read through it yet.

It seems to be an absolutely authentic copy of the minutes. I admit that. But here again we are dealing with a meeting not, such as I expressed myself in answering my counsel, of the Reichs Defense Counsel but a larger meeting in which many other officials participated, and the second council after 1938, the second Reichsverteidigungs Council, not the secret one, which dated from 1933 to 1938.

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Q In other words, in interpreting your testimony, we must understand that when you say there was no meeting of the Reich Defense Council, you only mean that there were no meetings in which no other people were present?

A No, that is not correct. There were two Reich Defense Laws concerning Reich Defense Councils, which I tried to explain in my statements. The secret one, which had not been publicized, of 1933 to 1938, and the Reich Defense Council which later was created in 1938 and was transferred into the Ministerial Council in 1939, and that one held meetings away beyond the number of its own members.

Q Then you say that this was not the Defense Council that met under the ban of secrecy?

A The Prosecution would like that I first give an answer with Yes or No. It is hard to answer this question with Yes or No. I assert that the secret defense council, which had not been publicized, which consisted of ministers from 1933 to 1938, never met. After 1938 a new Reich Defense Law created a new one. At that time it was clear that re-armament had already been publicized. This first one, which was called the secret one here, has never met, and the document of yesterday proved that.

Q Will you refer to Page 19 of this document, please, and tell me whether one of the very things that this meeting concerned itself with was not the lifting of the secrecy ban from the Reich Defense Law?

A No, that is not the way it reads here. If I may translate it, the last point of the discussion -- consequences resulting from the lifting of the secret protection of the Reich Defense Law, protection of secrecy, and measures to facilitate the working have already been taken care of on the 26th. The consequences resulting from the lifting of the secrecy ban.

Q You have stated that on the Jewish question, some of the members of the government were more radical than you, and would you state who those were?

A At first generally when we took over the government, the demand was in the beginning to remove them from political positions and other

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leading positions in the state.

THE PRESIDENT: That is not a direct answer to the question. The question was that you said some members of the government were more radical towards Jews than you were, and would you tell us which of the members of the government were more radical than you were.

A Excuse me, I did not understand the question to mean who, but wherein that more radical attitude was manifested. If you ask who, then I want to point out that these are Minister Goebbels and Himmler, primarily.

Q Do you also include your co-defendant, Streicher, as more radical than you?

A Yes, but he was not a member of the government.

Q He was a gauleiter, was he not, for thisvery territory in which we sit?

A That is correct, but he had hardly any or no influence at all in measures of the government.

Q What about Heydrich?

A Heydrich was subordinate to Himmler. If I said Himmler, I, of course, had to include Heydrich.

Q Heydrich is then included in the list of the more radical ones to whom you refer?

A That is right, yes.

Q What about Bormann?

A Bormann's activities in the more radical direction I could observe only during the later years. I do not know anything of his attitude in the beginning.

Q Now, I want to review with you briefly what the Prosecution understands to be public acts taken by you in reference to the Jewish question. From the very beginning you regarded the elimination of the Jew from the economic life of Germany as one phase of the Four Year Plan under your jurisdiction, did you not?

A The elimination, yes; that is right in part. The elimination as far as the large concerns were concerned because there continually disturbances were created by pointing out that there were large industries,

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also armament industries, still under Jewish directors or with Jewish shareholders, and that caused serious disturbances about the industries.

Q Now, do I understand that you want the Tribunal to believe that all you were concerned about was the big Jewish enterprises? That is the way you want to be understood?

A I was not at first disturbed by the small stores.

Q When did you become disturbed with the small stores?

A When trade had to be limited, then it was pointed out that this could be done first by closing the Jewish stores.

Q Now, let us go through the public acts which you performed on the Jewish question. First, did you proclaim the Nurnberg laws?

A As President of the Reichstag, yes, I have already stated that.

Q What date was that?

A 1935, I believe, in Nurnberg in September.

Q That was the beginning of the legal measures taken against the Jews, was it not?

A That was a legal measure.

Q That was the first of the legal measures taken by your government against the Jews, was it not?

A No, I believe that the elimination from various phases of civil employment was before.

Q When was that?

A I could not state the exact date, but I believe that happened in 1933.

Q Then on the first day of December 1936, you promulgated an act making a death penalty for Germans to transfer property abroad or leave it abroad; the property of a culprit to be forfeited to the state, and the People's Court given jurisdiction to prosecute, did you not?

A That is correct, the act to protect foreign currency. That is to say, whoever without the permission of the government established an account in a foreign country without permission of the government.

Q Then, your third public act was on 22 April 1939 when you published penalties for veiling the character of a Jewish enterprise within the Reich, was it not?

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A Yes.

Q Then on 28 July 1939, you, Hermann Goering, published certain proscriptions on the competence of the courts to handle those matters by the decree, did you not?

A Please, would you kindly read the law to me? I do not know it.

Q I will not take time reading it. Do you deny that you published Reichsgezetzblatt Law, 1939, found on page 1370, referring to the competence of the courts to handle penalties against the law? If you do not remember, say so.

A Yes, I say that I can not remember the law. If it was in the Reichsgesetzblatt and has my name under it, then, of course, it is so, but I do not remember the contents.

Q Now, on 26 April 1938 you, under the Four Year Plan, published a decree providing for the registration of Jewish property and provided that Jews inside and outside Germany must register their property, did you not?

A I assume so. I do not remember it any more, but if you have the decree there and if it is signed by me, there can not be any doubt.

Q On 26 April 1938 you published a decree under the Four Year Plan, did you not, that all acts of disposal of Jewish enterprises required the permission of the authorities?

A That I remember.

Q Then you published on 12 November 1938 a decree also under the Four Year Plan, imposing a fine of a billion marks for atonement on all Jews?

A I have already explained that, that all the decrees of that time were signed by me, and I assumed responsibility for them.

Q Well I am asking you if you did not sign that decree. I am going to ask you some further questions about it later.

A Yes.

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Q Then on the 12th of November, 1938, you also signed a decree that, under the Four Year Plan, all damage caused to Jewish property by the riots of 1938 must be repaired immediately by the Jews, and at their own expense, and their insurance claims were forfeited to the Reich. Did you personally sign that law?

A A similar law I signed. Whether it was exactly the same as you have just read, I could not say.

Q You don't disagree that that was the substance of the law, do you?

A Yes.

Q And on the 12th of November, 1938, did you not also personally sign a decree, also under the Four Year Plan, that Jews may not own retail stores or engage independently in handicrafts or offer goods or services for sale at markets, fairs, or exhibitions, or the leaders of enterprises or members of cooperatives. Do you recall all of that?

A Yes. Those are all parts of the decrees for the elimination of Jewry from economic life.

Q Then, on the 21st of February, 1939, you personally signed a decree, did you not, that the Jews must surrender all objects of precious metals and jewels purchased to the public office within two weeks?

A I do not remember that, but I am sure, without doubt, that that is correct.

Q I refer to Volume I of the Reichsgesetzblatt, 1939, page 282. You have no recollection of that?

A I do not have the Reichsgesetzblatt in front of me now, but if there is a decree there in the Reichsgesetzblatt or a law signed by my name, then I have signed that law and decreed it.

Q Did you not also, on the 3rd of March, 1939, sign a further decree concerning the period within which items of jewellery must be surrendered by Jews--Reichsgesetzblatt, Volume I, 1939, page 387?

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A I assume that was the decree of execution concerning the decree mentioned before. A law sometimes requires regulations of execution as a consequence of the law. Seen together, this is just one measure.

Q Did you not also sign personally a decree under the Four Year Plan of the 17th of September, 1940, ordering the sequestration of Jewish property in Poland?

A Yes. I stated that once before. In that part of Poland, if I may point that out, which had been previously a old German province. It was to return to Germany.

Q Did you not also, on the 30th day of November, 1940, personally sign a decree which provided that the Jews should receive no compensation for damages caused by enemy attacks or by German forces, and did you not sign that in the capacity of President of the Reich Defense Council? I refer to Reichsgesetzblatt, Volume I, 1940, page 1547.

A If you have it there bef re you, then it must be correct.

Q You have no recollection of that?

A Not concerning all details of law and decrees. That is impossible.

Q Then, it was you, was it not, who signed, on the 31st day of July, 1941, a decree asking Himmler and the chief of security police and the SS Gruppenfuehrer Heydrich to make the plans for the complete solution of the Jewish question?

A No, that is not correct. This decree I know very well.

Q I ask to have you shown document 710, US-509.

THE PRESIDENT: Is that 710-PS?

MR. JUSTICE JACKSON: 710-PS, your Honor.

(A document was handed to the witness.)

That document is signed by you, is it not?

A That is correct.

Q And it is addressed to the chief of the security police and the security service and to SS GRuppenfuehrer Heydrich, isn't it?

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A That is also correct.

Q I am not certain whether the entire thing has been read into the record, but I think it should be, and that we may have no difficulty about the translation of this, you correct me if I am wrong: "Completing the task that was assigned to you on the 24th of January, 1939" --

A That is a mistake already. It says, "In completion of the task which has been transferred to you," not as it was translated to me before.

Q Very well, I will accept that. "Which dealt with arriving at a thorough furtherance of emigration and evacuation, a solution of the Jewish problem, as advantageous as possible, I hereby charge you with making all necessary preparations in regard to organizational and financial matters for bringing about a complete solution of the Jewish question in the German sphere of influence in Europe."

Am I correct so far?

A No, that is in no way correctly translated into the German.

Q Give us your translation of it?

A May I read it as it is written here? "In completion of the task which has been conferred upon you already on the 24th, 1939, to solve the Jewish problem in the form of emigration and evacuation and to bring to the best possible solution, according to present conditions, I charge you herewith to make all necessary preparations in the way of organization and material matters."

Now comes the decisive word which has been mistranslated:

"For a collective solution," not "for a final solution."

"For an entire, a collective solution of the Jewish question within the area of German influence in Europe. As far as here the competency of other agencies would be touched, they are to participate. I charge you further to submit to me soon your total plan concerning it in the way of organization and materials, in order to be able to carry out the desired solution of the Jewish question, in completing the task which has been turned over to you on the 24th January, 1939. "That is to say, at a time when no war had started or was to be expected.

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I wanted to give an explanation to the quotation and just to point out that date.

Q Yes. Well, I just didn't want it to appear that it was

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a part of the instrument. The last that is contained in the instrument is:

"I charge you furthermore to send me, before long, an over-all plan concerning the organizational, factual and material measures necessary for the accomplishment of the desired solution of the Jewish question."

Is that not a substantially accurate translation of your order to Heydrich and Himmler?

A To Heydrich and the other central offices which had anything to do or would have anything to do with it. That can be seen from the first part of the letter, the last sentence.

Q Let's have no misunderstanding about this translation, now. This letter itself was directed to the chief of the security police and the security service and SS Gruppenfuehrer Heydrich. We are right about that, are we not?

A That is correct, but I have to make an explanation in connection with that.

Q All right.

A The reason we sent this letter to him was that Heydrich had been, with the decree of the 24th of January, 1939, that is to say Himmler, respectively, had received the task of emigration of Jews. Therefore, this was the central office concerned with regard to all the material and economic consequences. I had to turn to that office which was charged with that task.

Q Yes. And you ordered all other governmental agencies to cooperate with the security police and the SS in the final solution of the Jewish question didn't you?

A There is nothing about the SS, only the SD, the Sicherheitspolizei. Heydrich was SS Gruppenfuehrer. He had nothing directly to do with it, because it was sent to the chief of the security police -- mentioning his rank as SS Gruppenfuehrer Heydrich.

Q And mentioning his rank in the SS was just superfluous and has nothing to do with the case?

A I have to explain that. If I write to the supreme commander of the army, then I write to the supreme commander of the army, Colonel-General or Fieldmarshal von Brauchitsch, for instance. And if I write to the chief of the security police, SS Gruppenfuehrer Heydrich. That was his rank and his title. However, that had nothing to do with the mentioning of the SS.

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Q Now, at the time that you issued this order you had received complete reports as to the 1938 riots and Heydrich's part in them, hadn't you?

A As far as the participation of Heydrich was concerned, I did not have the information about it at that time -- only the report by Heydrich about the riots which I had demanded.

Q All right. Now we will show you Exhibit No. 3058 PS, in evidence as U.S. Exhibit 508.

(A document was handed to the witness)

That is the report of Heydrich which you say you had received, dated 11 November 1938, was it not?

A That is correct.

Q And it recited to you the looting of Jewish shops, the arrest of 174 persons for looting, the destruction of 815 shops, 171 dwellings set on fire or destroyed, and that those indicated only a fraction of the actual damage caused; 191 synagogues were set on fire, and another 76 completely destroyed; in addition, 11 parish halls, cemetery chapels, and similar buildings were set on fire, and 3 more completely destroyed; 20,000 Jews were arrested; also, 7 aryans and 3 foreigners. The latter were arrested for their own safety. 36 Deaths were reported, and those seriously injured were also numbered at 36. Those killed and injured are Jews. One Jew is still missing. The Jews killed include 1 Polish national, and those injured include 2 Poles.

You had that report on or about the 11th day of November, 1938, did you not?

A That is correct. That is the report which I have mentioned which I had requested from the police, because I wanted to know what had happened up to then.

Q Exactly. And the note was made at the top of it, "The General Fieldmarshal has been informed no steps are to be taken," was it not?

A That is not correct in this way: It says here, "General Fieldmarshal has been informed no steps are to be taken from any other office," because I myself wanted to take them.

Q Now, you know that that isn't true, don't you, that those steps were to be taken by any other office? I put it to you squarely whether you are telling this Tribunal when you say that no steps were to be taken by anyone else,

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whether you are telling this Tribunal the truth.

A This is a note by my adjutant, that from that side nothing would be done, because I pointed out I am going to take care of it personally, because with this report I went straight to the Fuehrer.

Q All right. Did you receive a report from the chief Party adjutant of the Nazi Party, dated Munich, the 13th of February, 1939, of the Party proceedings about these matters?

A That is correct. Much later I received that report.

Q And at the time you appointed -- I withdraw the question. It is obvious from the dates of the documents. You acknowledged the receipt of that document, did you not, to Party member Buch?

A That is also correct.

Q And the only proceedings that were taken about these riots were proceedings taken by the court of the Party, were they not?

A Not quite; some were brought before the court. That is in the report also.

Q I ask that he be shown the report, which is document 3063-PS. It is not in evidence. Since the document apparently hasn't been brought here, I will ask you from your recollection.

A I know it pretty well.

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Q I thought so,

A No, because it has been submitted to me before, here.

Q Yes, it has been kept from you, Now, in the first place, the Party court reported that it was probably understood -- I quote -- "by all of the Party leaders present, from oral instructions of the Reich Propaganda Director, that the Party should not appear outwardly as the originator of the demonstrations but in reality should organize and execute them." Was that the report of the Party court?

A The Party court, as a result of its investigation, established that the propaganda Chief Goebbels has given these directives. May I ask, we are dealing with a report of the days of March or maybe April?

Q The 13th of February 1939 is the date.

A Yes, that is correct; that is the result of investigations after the incidents.

Q That is right. Now, as a result of the riots, did the court, the Party court not also report this to you: "The Supreme Party Court has reserved for itself the investigation of the killings, severe mistreatment and moral crimes and that it would request the Fuehrer to squash proceedings against any persons that the Party court did not find guilty of excesses."

A That is correct.

Q And the Party court was made up of Gauleiters and group leaders of the Party?

A The Party court changed. I cannot say just how, without having the document, who was the Party court at that time. I just see the document.

Q I call your attention to page 4, toward the bottom, where the report says "Gauleiters and Group leaders of the branches served as jurors at the trials and decisions,"

A Yes, that is a matter of course that the jurors of the Party Court were always taken from these categories according to their importance. I only wanted to express I did not know which names were participating.

Q Now, the Party court found five persons guilty of offenses. did they not? Number 1 was a moral crime and race violation by one of the members of the Party and he was expelled. Is that right?

A And turned over to the penal court. That is what it says in the

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last sentence.

Q That is right. Another Party member, Number 2 case, was suspected of race violation and was expelled from the Nazi Party.

A For suspicion of race violation and turned over to the State Court.

Q Yes; and number 2, Gustav, was expelled from the Party and SA for theft. Right?

A You have Number 3?

Q I have Number 2, Gustav, the first name mentioned.

A Gustav is the first name -- Gerstner -- yes, for theft, also on suspicion of race violation; turned over to the State Court.

Q Now, Number 3 dealt with expulsion of Party members on the grounds of moral crimes against a Jewess and they are now held in protective custody. Right?

A Expelled from the NSDAP, taken into protective custody; those have also been turned over to the civil courts later and to the penal courts. I know that very well.

Q Now, you come to cases 4 and 5, the first of which was a man, a Party member and SA member, who was given a warning and sentenced to three years, deprivation of ability to hold public office because of disciplinary violation; namely, killing of the Jewish couple Selig, contrary to orders. Is that right?

A That is correct.

Q And the last of these cases was a warning and a sentence of three years, deprivation of ability to hold office because of shooting a sixteen year old Jew, contrary to orders after completion of the drive. Is that right?

A That is correct.

Q We now come to the cases of killing Jews, in which proceedings were suspended or minor punishments pronounced, and I will not go through those in detail but it is a fact that only minor punishments were pronounced for the killing of Jews by the Supreme Court of the Party, were they not?

A Yes, that is correct.

Q I now ask you to turn to page 9.

A One moment please.

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Q I call your attention to this language in regard to cases 3 to 16.

A Which page, please.

Q Nine, I believe it is. The Supreme Party Court asks the Fuehrer to squash the proceedings in the State Criminal Courts.

A To squash them, to beat them down, that does not mean suppress. A penal proceeding can be "niedergeshlagen" In German that is something different. It is not the same thing as suppress.

Q Well, you give us your version of it and tell us what it is. What does beating down a proceeding mean, does it mean that it has ended?

A That is what it means but it can only be ordered by an office which has authority to do it; that is to say, the Fuehrer can do that. The Cabinet at any time could resolve to suppress, that is, to beat down a proceeding -- suppressing it would have been illegal. That is the juridical expression in Germany, "niedergeshlagen."

Q And one further question. It was also reported to you, was it not in that report -- I refer to page 11 -- "The public down to the last man realizes that political drives, like those of the 9th of November, were organized and directed by the Party, whether this is admitted or not. When all the synagogues burned down in one night, it must have been organized in some way and only have been organized by the Party." That also was in the report of the Supreme Party Court, was it not?

A I did not find it yet. It is not the same page as mine.

Q Let us find it and not have any mistake about it. Page 11. I would think it would be at the very bottom of page ten, perhaps, where it starts.

A Yes, I just found it.

Q Did I give a reasonably correct translation of it?

A That is correct.

THE PRESIDENT. Would that be a convenient time to break off? before we break off, one moment; You will offer in evidence these documents that you have been putting to the witness, those which are not already in evidence?

MR.JUSTICE JACKSON: Yes, they should be, your Honor, I will do that.

THE PRESIDENT: I think 3575-PS may have been offered yesterday, and not strictly offered in evidence, and 3063-PS today, and one other document the number of which I haven't got.

MR JUSTICE JACKSON: I appreciate very much your calling my attention to it.

(A recess was taken until 1545 hours.)

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DR. HORN (Counsel for the defendant Ribbentrop):

Mr. President. . . . . .

INTERPRETER: I am sorry, but I'm not getting this at all.

THE PRESIDENT: The interpreter is saying that she could not hear. Will you please repeat what you said.

DR. HORN: I ask you, your Honor, to permit the defendant von Ribbentrop to be absent from tomorrow's session, as there are many matters that I have to discuss with him, so that I may have my material ready, and I request your permission.

THE PRESIDENT: Dr. Horn, your suggestion as I understand it, is that the defendant Ribbentrop should be absent from tomorrow morning's sitting in order that you may consult with him in reference with the preparation of his defense. Is that right?

DR. HORN: Yes.

THE PRESIDENT: The Tribunal has no objection to that course being taken provided that you make some arrangement whereby another defense counsel may be present in court in your absence from court if any questions arise. The Tribunal does not wish that you use your absence from court as an objection to something which may have arisen in your absence, you understand that, don't you?

DR HORN: Yes, Mr. President, and I give you my assurance that I will not use an objection of that nature and shall ask one of my colleagues to act in my behalf.

THE. PRESIDENT: The Tribunal has no objection to your taking that course of action, but of course you realize that the trial cannot be held up by any delay which might be caused in the future by the fact that you were not present.

DR. HORN: Mr President, the purpose of my request is such that it will help me to avoid future delays.

THE. PRESIDENT: Yes, I quite understand that. I was only saying that in allowing you to do this, which is perfectly reasonable, the Tribunal is merely indicating they will not grant future delays which might occur.

DR. HORN: I understand that and I wish to thank you.

H0088 - 0026

BY MR. JUSTICE JACKSON:

Q Now, the Voelkischer Beobachter of the 12th of March 1933 quotes a speech of yours delivered at Essen on the 11th of March 1933, including the following -- and I refresh your recollection by calling it to your attention:

"I am told that I must employ the police. Certainly I shall employ the police, and quite ruthlessly, whenever the German people are hurt, but I refuse the notion that the police are protective troops for Jewish stores. No, the police protect whoever comes into Germany legitimately, but it does not exist for the purpose of protecting usurers."

Did you say that?

A That was the period of time.

Q Did you say that on the 11th of March 1933 in a speech at Essen, that or that in substance?

A That is correct, but there was a different connection with the speech. Before I answer, I would like to ask whether you have quite finished with the other document that was submitted to me previously. I gave no explanation and will ask my Counsel to have me questioned later on in regard to that document.

Q That is satisfactory.

After the riot of November 9th and 10th, you have testified that you called a meeting on the 12th of November and ordered all officials concerned to be present, and that the Fuehrer had insisted on Goebbels being present.

A Yes.

Q And that after that meeting --

A All the leaders of the economical "resorts" or departments.

Q Could you tell us who was there in addition to yourself and Goebbels?

A Those present were, as far as I recall, for reporting purposes: The Chief of the Secret Police, the Minister of Economy, the Minister of Finance, the Minister of the Interior --

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Q Will you please name them by name so we won't have any mistake about who was who at that time.

A I can quote only from memory. Present were, to report all events: The Leader of the Secret Police for Berlin, Heydrich; Minister of the Interior, Dr. Frick; Dr. Goebbels you have mentioned already; the Minister of Economy, Funk; Finance Minister, Count Schwerin Krosick; from the Eastern Province, Fischbeck for the Ostmark.

These are the only names of personalities I can recall at present, although there may be a few others who were there too.

Q Part of the time, Hilgard, representing the insurance companies was also present, was he not?

A He was called in, was waiting, and was heard on special questions.

Q Now, you have been shown the stenographic minutes of that meeting which are in evidence as US Exhibit 261, being document 1816-PS, have you not, in your interrogation?

A Yes.

Q I will ask that they be shown to you now so that we may have no misunderstanding about the translations.

You opened the meeting with this statement, as I read it: "Gentlemen" -- I think perhaps you had better identify this meeting. This is the meeting held on the 12th day of November 1938 at the office of the Reichsministry for Air. That is correct, is it not?

A Yes, that is correct.

Q You opened the meeting:

"Gentlemen, today's meeting is of a decisive nature. I have received a letter written on the Fuehrer's orders by the Stabsleiter of the Fuehrer's Deputy Bormann, requesting that the Jewish question be now, once for all, coordinated and solved one way or another."

Is that correct?

A Yes, that is correct.

Q Further down, I find this:

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"Because, gentlemen, I have had enough of these demonstrations. They don't harm the Jews, but me, who is the last authority for coordinating the German economy. If today a Jewish shop is destroyed, if goods are thrown into the street, the insurance company will pay for the damages which the Jew does not even have, and furthermore, goods of the consumer, goods belonging to the people, are destroyed. If, in the future, demonstrations which are necessary occur, then I pray that they be directed so as not to hurt us."

Am I correct?

A Yes, quite correct.

Q Skipping two or three paragraphs, I come to this --

A But the supplement has been omitted.

Q Well, you can supplement it any way you want to.

A "And I wish to have these things directed in such a way that we will not be harming ourselves. If a Jewish store is evacuated and fired, the insurance will cover the damage and the products which I need will be destroyed, but in a case like that I might as well burn the raw materials as they come in."

Q That's right. You read any part of it that you want to as we go along, in addition to what I read.

"I am not going to tolerate a situation in which the insurance companies are the ones to suffer. Under the authority vested in me, I shall issue a decree and I am, of course, requesting the support of the competent government agencies so that everything shall be processed through the right channels and the insurance companies will not be the ones who suffer.

"It may be so that these insurance companies may have insurance in foreign countries. If that is the case, foreign bills of exchange would be available, which I would not want to lose. That shall have to be checked. For that reason, I have asked Mr. Hilgard of the insurance companies to attend, since he is best qualified to tell us to what extent the insurance companies are protected against damage by having

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taken out insurance with other companies. I would not want to miss this under any circumstances."

Is that correct?

A That is absolutely correct.

Q "I should not want to leave any doubt, gentlemen, as to the aim of today's meeting. We have not come together merely to talk again, but to make decisions, and I implore the competent agencies to

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take all measures for the elimination of the Jew from German economy and to submit them to me as far as is necessary."

A That is correct.

Q I then skip a considerable portion, unless there is more that you wish to put in, and come to this statement:

"The Trustee of the State will estimate the value of the property and decide what amount the Jew shall receive. Naturally, this amount is to be set as low as possible. The representative of the State shall then turn the establishment over to the Aryan proprietor, that is, the property shall be sold according to its real value.

"There begin the difficulties. It is easily understood that strong attempts will be made to get all these stores to Party members and to let them have some kind of compensation. I have witnessed terrible things in the past; little chauffeurs of Gauleiters have profited so much by these transactions that they have now about half a million. You gentlemen know it. Is that correct?" And they assented.

A Yes, I said that.

Q Do you care to read anything further in connection with that?

A Perhaps only the next sentence:

"These are, of course, things which are impossible and I shall not hesitate to act ruthlessly in any case where such a trick is played. If the individual involved is prominent, I shall see the Fuehrer within two hours and report to him."

Q That is, if any individual was attempting to profit by Jewish possessions -- is that what you meant?

A By the aryanization.

Q I will quote another portion:

"In other words, an ordinary business transaction is to be sought, one merchant selling, the other one buying a business. If there are Party members among the contenders, they are to be preferred, that is, if they have the same qualifications. First shall come the one who has had the most damage; secondly, selection should be according to ranks of Party membership."

I skip a line or two:

"This Party member should have a chance to buy the store for as cheap a price as possible. In such a case, the State will not receive the full price, but only the amount the Jew received."

Is that correct?

A Just a moment, please, I believe we skipped something.

Q Yes, we did. If you want to put it in, you may read it.

A No, I might just say briefly, regarding the substance, I said what you have already said, that if there is any consideration to be given, the Party member is to be preferred, first of all the one who had been hurt previously in that his business concessions had been taken away from him just because he had been a Party member, and then follows the paragraph which you read and which is correct as it was read.

Q Now, you then take up at considerable length the method by which you shall aryanize Jewish stores, is that right?

A Yes.

Q And then you take up the aryanization of Jewish factories.

A Yes.

Q You take up the smaller factories first.

A Yes.

Q Have you found the place where you take up the factories?

A Yes, I have found it.

Q Quoting:

"As for the smaller and medium ones, two things shall have to be made clear: First, which factories do I not need at all, which are the ones where production could be suspended. Could they not be put to another use? If not, the factories will be razed immediately.

"Second, in case the factory should be needed, it will be turned over to Aryans in the same manner as the stores."

That is correct, is it?

A Yes.

Q Do you care to say any more on that subject?

A No, these should be the basic reasons for the laws.

Q Now, I call your attention to the paragraph second from that, starting, "Take now the larger factories," Do you find that?

A Yes.

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THE PRESIDENT: Just a minute, Mr. Jackson, the Russian translation is not coming through. All right, go on.

BY MR. JACKSON:

Q Dealing with the larger factories, and so on, do you not say the solution is very simple, that the factory can be compensated in the same manner as in the sale of stores and factories, that is, at a rate which we shall determine, and the trustees shall take over the Jews interest, as well as his shares, which in turn may be sold or transferred to the State, which will then dispose of them to the Reich?

A That means any one who has any interest in the factories will receive reparation, which will be determined by us, and that is true.

Q And the reparation will be turned over to the State Trustees, will it not?

A True, to the State trustees. The matter was simple to follow. The Jews received credit, and received a credit slip, and the matter was to be handled through the trustees.

Q Well, we will come down to where you deal with the foreign Jews, do you recall that?

A Yes.

Q At that point a representative of the foreign office claimed a right to participate on behalf of the Foreign Minister, is that right?

A Yes.

Q Well, now, we will pass down to the point of the conversation between yourself and Heydrich.

A Just a moment, please. Part of the minutes, I may have them. Yes, I found the place where Heydrich is mentioned for the first time.

Q You inquired how many synagogues were actually burned, and Heydrich replied, "Altogether there were 101 synagogues destroyed by fire, 76 synagogues demolished, and 7500 stores ruined in the Reich." Have I quoted that correctly?

A Yes.

Q Well, then, Mr. Goebbels interposed, "I am of the opinion that it is our chance to dissolving the synagogues, and then you have a discussion about the dissolving the synagogues, did you not?

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A Through Dr. Goebbels, yes, and the explanation of Dr. Goebbels, that is to say.

Q Then Dr. Goebbels raised the question of Jews travelling on railway trains?

A Yes.

Q And let me see if I quote the dialogue between you and Dr. Goebbels correctly on that subject. That Dr. Goebbels said, "Furthermore, I advocate that Jews be eliminated from all positions in public life in which they may prove to be provocative. It is still possible today that a Jew shares a compartment in a sleeping car with a German; therefore, we need a decree by the Reich Ministry for Communications stating that separate compartments for Jews shall be available. In cases where compartments are filled up, Jews can not claim a seat. They shall be given separate compartments only after all Germans have secured seats. They shall not mix with the Germans, and if there is no more room, they shall have to stand in the corridor." Is that right?

A Yes, that is correct.

Q "Goering: In that case I think it would make more sense to give them separate compartments. Goebbels: Not if the train is over-crowded. Goering: Just a moment. There will be only one Jewish coach. If that is filled up the other Jews will have to stay at home. Goebbels: Suppose though there won't be many Jews going on an express train to Munich. Suppose there will be two Jews in a train, and the other compartments would be over-crowded; these two Jews would then have a compartment all by themselves therefore, Jews may claim a seat only after all Germans have secured a seat. Goering: I would give the Jews one coach, or one compartment, and should a case like you mentioned arise, and the train be over-crowded, believe me, we won't need a law. We will kick him out, and he will have to sit alone in the toilet all the way." Is that correct?

A Yes. I had become a little nervous when Goebbels had had important matters that were brought forward in certain particulars, and in this connection I gave out no decrees, or no laws. Of course, today, it is in their right very pleasant for the prosecution to present it , but I wish to state that it was a very lively session, in which Goebbels made demands

which were as I say in a radical scope, and in a radical criminal scope, and in accordance with my demeanor I expressed myself.

Q Then Goebbels would be radical at this stage when he said that Jews should stand in the corridors, and you said that they would have to sit in the toilet. That is the way you say it?

A No, that is not so. It is only pictured that way. I said that they should have a special compartment, and when Goebbels still was not satisfied, and made a further explanation in detail, I finally told him, "I do not need to require for some one to sit in the toilet, but that some one might as well sit in the toilet, and that these utterances had no worldly significance."

Q Let's go down to where Goebbels brings up the subject of the German

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F rests.

A Just a moment, please. Yes. It became a state where Goebbels wished a decree which would prevent Jews to go to German Recreational Centres, and I answered to that,"Established some of their own for them," and then he said; "It would have to be considered whether we should turn a few German resorts over to them, to some of their own, but not the finest and the best, and we can not say that for the Jews for their recreation, also to put resorts at their disposal," and it was to be considered, if p possible, to prohibit Jews from entering German Forests, because many Jews were taking walks in the Grunewald in Berlin, and that was not a Provocation. Then several others interposed, and I rather drastically answered, "Then it would be better to put a certain part of the forest at the disposal of the Jews, because you want them out of the rest of the forest, "and I made the remark which seems to be of interest at this point.

Q Let's have that remark. Is it not correct, you did state, "We will give the Jews a certain part of the forest, and the Alpers shall take care of it with the forest animals that look damm much like Jews -- the Elk has such a crooked nose, get them also to become acclimated." Is that what you said"?

A Yes, I said it, and that is to be understood as coming from the whole feeling of the men at this meeting, and Goebbels again said he considered this demeanor provoking, and if I may say so, it was provoking to me, and that he wished to leave the economic matters on the side, and rather bring in those secondary matters.

Q Now, you come to the point where you ask Mr Hilgard from the Insurance Company to come in. Do you find that?

A Yes.

Q Then you made a statement to Mr Hilgard when he appeared."The following is our case. Because of the justified anger of the people against the Jews, the Reich has suffered a certain amount of damage. Windows were broken, goods were damaged, and people hurt; synagogues burned, and soforth. I suppose that Jews, many of them are also insured against damage committed by public disorder. Hilgard: Yes. Goering if that is so the following situation arises. The people in their justified anger meant to harm the Jew

Jews, but these German insurance companies are to compensate the Jews for the damage. This situation is simple enough. I only have to issue a decree to that effect, that damage resulting from these risks shall not have to be paid by the insurance company." Is that what you said?

A Yes, I said all of that.

Q Hilgard then outlines three kinds of insurance, and pointed out to you that at least as to plate glass insurance, the majority of the victims who were the owners of the buildings were Aryans, and that the Jews had usually been the renter, is that right?

A Yes, those are all the particulars.

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A Yes, those are the particulars.

Q And Hilgard said: "May I draw your attention to the following facts: Glass for the shop windows is not being manufactured by the Bohemian but by the Belgian glass industry. In my estimation the approximate money value to which these damages amount is six million. That includes the broken glass, glass which we shall have to replace mainly to Aryans because they have insurance policies."

THE PRESIDENT: Mr. Justice Jackson, before you pass from that page, in the third paragraph, just for the sake ofaccuracy, it appears that the name "Mr. Hilgard" is wrongly placed, does it not, because he both seems to put the question and answer it.

MR. JUSTICE JACKSON: Well, I think that is --

THE PRESIDENT: Probably the defendant Goering put the question. It is the third paragraph on my page.

MR. JUSTICE JACKSON: I take it that the minutes came in that way; that when Hilgard appeared Goering addressed him as "Mr. Hilgard".

THE PRESIDENT: Yes, I see.

MR. JUSTICE JACKSON: But it is correct as your Honor suggests.

THE WITNESS: I wish to point out that preceding this matter, if this glass damage, as Goebbels said, is involved, the Jews must take care of the damage and I said, "It is not possible, we have no raw material, it is all foreign glass. That will require foreign currency and this is a very important problem." Then come the discussions just mentioned.

BY MR. JUSTICE JACKSON:

Q Yes, and Hilgard pointed out that -- "Incidentally the amount of damage equals about half of a whole year's production of the Belgian glass industry. We believe that half a year will be necessary for the manufacturers to deliver the glass."

Do you recall that?

A Yes.

Q Well, passing down, you come to a point at which Hilgard tells you about a store on Unter-den-Linden that was a subject of attack. Do you find that?

A He said, "The largest cases which we have is the case Markgraf Unter-den-Linden." Is that the case you mean?

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Q That is right.

A Yes, I found the place.

Q "The damage reported to us amounted to about one million seven hundred thousand because the store was completely stripped." Is that right?

A Yes.

Q "Goering: Daluege and Heydrich, you will have to get me this jewelry through raids staged on a tremendous scale." Is that the order you gave?

A Yes, of course, that the stolen goods would be brought back.

Q Brought back to you, brought back not to the Jews.

A Not to me personally, I beg your pardon.

Q Brought back to the State -- you didn't intend to return them to the Jews.

A We are not concerned with that at this point. Decisive is the fact that they were to be returned.

Q "We are trying to get the loot back,"as Heydrich put it, is that right, and you added, "and the jewels"?

A I cannot, if a large jewelry store is plundered, permit that nothing be done because these valuables could cause a great deal of damage and therefore, I gave the order, through raids, to bring back these stolen goods as well as other goods. If this business was Aryanized the contents or the inventory of the store went over to the new possessor. Decisive was that, first of all, against those who did the stealing and the plundering steps would be taken against them and it says here that already one hundred and fifty had been arrested.

Q And Heydrich continued to report on the method of these raids after you reminded him to bring back, to get the jewels.

"This is very difficult to say. They were partly thrown into the street and picked up there. Similar things happened with the furriers. For example, in Frilderichstrasse, there the crowd was naturally rushing to pick up minks, skunks and so forth. It will be very difficult to recover that. Even the children have filled their pockets just for fun. It is suggested that the Hitler Youth is not to be employed and to participate in such actions without the Party's consent. Such things are very easily destroyed."

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A It says that, yes.

Q And Daluege then suggests: "The Party should issue an order to the effect thatthe police will immediately receive a report in case the neighbor's wife, everybody knows his neighbor, has a fur coat altered or in case somebody appears wearing new rings or bracelets. We would like the Party to support this."

Correct?

A This is absolutely correct.

Q Now, Hilgard objectedto your plan of relieving the insurance companies from paying the claims, did he not?

A Yes, that is right also.

Q And he gave these reasons:

"Hilgard: If I may give reasons for this request, I would like to say that it simply has to do with the fact that we carry out to a large extent quite a number of international transactions. We have a very good international basis for our business transactions and in the interests of the equilibrium of the foreign exchange in Germany we have to make sure that the confidence in the German insurance shall not be ruined. If we now refuse to honor clear-cut obligations imposed upon us through a lawful contract, it would be a black spot on the shield of honor of the German insurance.

"Goering: It would not be the minute I issue a decree, a law sanctioned by the State."

Am I quoting correct?

A Yes, and Hilgard's reply, and that was the reply I am concerned with -- he meant without a basis in law they could

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not refuse to pay their claims but if the sovereign state made a law that the insurance claims may be taken over in favor of the State, then the insurance company in itself is not responsible for any action thereafter.

Q Now, I suggest to you that that is not correct but that even though you proposed to issue a decree absolving the German insurance companies, the companies insisted on meeting their obligations and then Heydrich interposed and said:

"The insurance may be granted but as soon as it is to be paid it will be confiscated. In that way we will have saved our face."

Correct?

A Heydrich said that but I gave out a clear-cut and definite law.

Q Did you not then say:

"One moment. You will have to pay in any case because it is the Germans who suffered the damage. But it will be a lawful order forbidding you to make any direct payments to Jews. You shall also have to make payments for the damage that Jews have suffered but not to the Jews, but to the Minister of Finance.

"Hilgard: Aha."

You adopted Heydrich's suggestion which was quite contrary to the one you brought up?

A No, I did not support Heydrich. I made a law that the insurance claims that were to go to Jews were to be redirected to the Ministry of Finance. I did not agree with Heydrich that insurance was to be paid and on the quiet be confiscated. I went a definite, legal way and was not afraid to make the law and to take the responsibility that these premiums were to be paid to the State, that is to the Finance Minister.

MR. JUSTICE JACKSON: Well, the Tribunal will judge for itself, we have the evidence.

BY MR. JUSTIC JACKSON:

Q Now, Hilgard, representing the insurance companies, then raised the question that the amount of glass insurance premium was very

H0088 - 0041

important, that glass insurance was the companies' greatest asset, "but now the amount of this damage is alone twice as high as for the amount of ordinary years" and he raised the question of destroying the profits of the German insurance companies, did he not?

A Yes.

Q And also the question of the number of stores destroyed -- Heydrich reported 7,500, is that right?

A Yes.

Q Now, I call your attention to the following conversation.

"Daluege --"

Who, by the way, was he?

A Daluege was the leader of the Schutzpolizei (Protective Police).

Q "One more question ought to be cleared up. Most of the goods in the stores were not the property of the owner but were kept on the books of other firms which had delivered them. Then there are the unpaid for deliveries by other firms which definitely are not all Jewish but Aryan, those goods that were delivered on the basis of commission.

"Hilgard: We will have to pay for them too.

"Goering: I wish you had killed two hundred Jews and not destroyed such valuables.

"Heydrich: There were thrity-five killed."

Do I read that correctly?

A Yes, it was a utterance of spontaneous excitement.

Q Spontaneously sincere, wasn't it?

A It was not meant seriously as I emphasized. It was a spontaneous and momentary excitement about the proceedings, about the destruction of valuables and the difficulties which had arisen for me. Of course, if every word you utter during the course of twenty-five years in intimate circles, if you put them into balance, I admit these utterances assume another nature.

H0088 - 0042

Q Then Funk interposed to discuss the foreign exchange point, did he not? He contributed to the discussion, did he not, for a while? I will not bother to go into it.

A Yes, but certain parts of the minutes are lacking and it is not clear to me entirely. I regret that these pages are absent.

Q I join you in that.

Hilgard returned again to the subject of the profit of the insurance companies, did he not?

A Yes, of course.

Q And you made this statement, did you not?

"The Jews shall have to report the damage. He will get the refund from the insurance company but the refund will be confiscated. If it is all said and done, there will remain some profit to the insurance companies, since they do not have to make good for all the damage. Mr. Hilgard you may enjoy yourself.

"Hilgard: I have no reason for that. The fact that we won't have to pay all the damage is called profit.

"Goering: Just a moment. If you are compelled under the law to pay five million and all of a sudden there appears an angel in my somewhat corpulent form before you and tells you you may keep one million, why can't that be called making a profit? I should actually split with you or whatever you would call it. I can see it looking at you, your whole body grins, you made a big profit."

Am I quoting correctly?

A Yes, of course, I said all of that.

THE PRESIDENT: We will break off now.

(A recess was taken until 14.00).

H0088 - 0043

Official transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 20 March 1946, 1400 to 1700 hours, Lord Justice Lawrence presiding.

DR. SEIDL (Counsel for the Defendant Hess): Mr. President, the Defendant Hess has expressed his wish to be excused at this afternoon's session, for the reason that he wants to prepare himself for his being called as a witness, which will occur during the next few days. I don't believe that this will cause a delay in the proceedings, and I should like to ask the Tribunal to approve this request on Hess's part.

THE PRESIDENT: Certainly, on the same conditions as before, namely, that you arrange with somebody to protect your interests whilst you are absent.

DR. SEIDL: I will not be absent myself, only Hess.

THE PRESIDENT: Very well.

CROSS-EXAMINATION -- continued

BY MR. JUSTICE JACKSON:

Q I would like to call your attention again to the exhibit, US-261, Document 1816-PS. Would you turn to Part 5, where you were speaking of Markgraf's jewels that disappeared?

A That is going back to what we have passed already.

Q Yes, for a time, to Part 5. I call your attention to your statement as follows:

"Now, for the damage the Jew has had, at Markgraf's the jewels disappeared and so forth. Well, they are gone and he won't get them refunded. He is the one who has to suffer the damage. If the jewels may be returned again by the Police, they belong to the State."

Do you find that?

A That's correct, but on the basis of the laws he was compensated for that.

Q Now, there was a representative of Austria present at this meeting, was there not?

A Yes.

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Q And I ask you to turn to his statement in reference to conditions in Austria, a page or so farther on.

A Yes.

Q And I ask you whether he did not report to your meeting as follows:

"Your Excellency, in this matter we have already a very complete plan for Austria. There are 12,000 Jewish artisans and 5,000 Jewish retail shops in Vienna. Before the national revolution we had already a definite plan for tradesmen, regarding this total of 17,000 stores. Of the shops of the 12,000 artisans, about 10,000 were to be closed definitely" - - -

A The interpreter didn't follow --

Q Do you find it?

A I have found it, but the interpreter didn't.

Q "Regarding this total of 17,000 stores, of the shops of the 12,000 artisans, about 10,000 were to be closed definitely and 2,000 were to be kept open. Four thousand of the 5,000 retail stores should be closed and 1,000 kept open, that is, were to be Aryanized. According to this plan, between 3,000 and 3,500 of the total of 17,000 stores would be kept open, all others closed. This was decided following investigations in every single branch and according to local needs in agreement with all competent authorities and is ready for publication as soon as we shall receive the law which we requested in September. This law shall empower us to withdraw licenses from artisans quite independently of the Jewish question.

"Goering: I shall have this decree issued today."

A Yes, of course. This had to do with the law for the limitation of the retail trade which without connection with the Jewish question would have required a limitation in numbers. That can be seen from the minutes.

Q Very well, let us go on a little further. Do you mean to inform the Tribunal that this did not apply to Jewish shops, that it had no connection with the Jewish question?

A I have said that independently of the Jewish question, a reduction, a limitation of the stores and shops would have been taken care of in Austria, and that can be seen from the following sentence by Mr. Fischboeck which you have read, that they asked for a law which should authorize them generally and without connection with the Jewish question to withdraw licenses.

H0088 -0045

That would be a short law. Whereupon I answered, "The decree may be issued today."

Q Now, if you will --

A And that now, of course, in the first line, Jewish stores would be eliminated. That I said in the beginning.

Q Please go on down two paragraphs to where this was reported:

"This way I believe that fewer than 100 stores would be left and by the end of the year we would have liquidated all the Jewish-owned businesses which so far have been obvious as such in the eyes of the public.

"Goering: That would be excellent."

A Yes, yes, that was the sense -- the reason for that meeting.

H0088 - 0046

"Out of 17,000 stores 12,000 or 14,000 would be shut down and the remainder Aryanized or handed over to the Bureau of Trustees, which is operated by the store.

"Goering: I have to say that this proposal is grand. This way the whole affair would be wound up in Vienna, one of the Jewish capitals, so to speak, by Christmas or by the end of the year."

"Funk: We can do the same thing here. I have prepared a law elaborating that. Effective the 1st of January, 1939, Jews shall be prohibited from operating retail stores and wholesale establishments, as well as independent artizan shops. They shall be further prohibited from keeping employees or offering any ready products on the market. Whenever a Jewish shop is operated the police shall shut it down.

"From the 1st of January 1939 a Jew can no longer be employed as an enterpriser, as stipulated in the law for the organization of national labor from the 20th of January, 1934. If a Jew has a leading position in an establishment without being enterpriser, his contract may be declared void within six weeks by the enterpriser. With the expiration of the contract all claims of the employee, including all claims to maintenance, become obliterated. That is always very disagreeable and a great danger.

"A Jew cannot be a member of a corporation. Jewish members of corporations shall have to be retired by the 31st of December 1938. A special authorization is unnecessary. The competent ministers of the Reich are being authorized to issue the provision necessary for execution of this law."

"Goering: I believe we can agree with this law."

A Yes.

Q Now I ask you to pass a considerable dialogue relating to the Vienna situation and I call your attention to the point at which Funk inquires of you, "Why should the Jew not be allowed to keep bonds?"

"Goering: Because that way he would actually be given a share."

A Yes, that was the purpose, to get them out of the enterprise. If he kept the shares, then, on the basis of the law, he still had an interest in the enterprise, and on the basis of the shares he could still express his will in the enterprise."

H0088 - 0047

Q You turned Funk's suggestion down that the Jews be allowed to keep bonds?

A Yes. Obligations I put in the place of bonds.

Q Well, we will pass several more pages of debate, unless there is something you want to call attention to, and I come to the point where Heydrich is stating his position. I call your attention to this dialogue:

"Heydrich: At least 45,000 Jews were made to leave the country by legal measures."

"Goering" --

A One moment, please. I find it now.

"At least 45,000 Jews were made to leave the country by legal measures. How was this possible?" and then Heydrich tells you that "through the Jewish societies we extracted a certain amount of money from the rich Jews who wanted to emigrate. By paying this amount and an additional sum in foreign currency they made it possible for a number of poor Jews to leave. The problem wasn't to make the rich Jew leave but to get rid of the Jewish mob."

Is that correct?

A One moment, please. I don't find it here yet, but generally that is correct, yes.

Q Pass on a little further. Heydrich is making suggestions and says, "As for the isolation, I would like to make a few proposals regarding police measures, which are important also because of their psychological effect on public opinion.

"For example, who is Jewish according to the Nurnberg laws shall have to wear a certain insignia. That is a possibility which will facilitate many other things. I don't see any danger of excuses, and it will make our relationship with the foreign Jews easier."

"Goering: A uniform?"

"Heydrich: Insignia. This way we could put an end to it that foreign Jews who don't look different from ours are being molested."

"Goering: But my dear Heydrich, you won't be able to avoid the creation of ghettos on a very large scale in all the cities. They shall have to be created."

Is that what you said?

H0088 - 0048

A I said that. At that time the problem was to get the Jews together in certain parts and along certain streets in the town, because on the basis of the tenant regulations it wasn't possible, and on that basis, if they would have insignias each individual Jew would have been protected.

Q Now, passing further in the discussion, I call your attention to this warning from Heydrich about the measures which had been discussed:

"Goering: Once we would have a ghetto we would find out what stores ought to be in there and we would be able to say, 'You, Jew so and so, together with so and so, shall take care of the delivery of goods,' and a German wholesale firm will be ordered to deliver the goods for this Jewish store. The store would then not be a retail shop but a cooperative store, a cooperative one for Jews."

"Heydrich: All these measures will eventually lead to the institution of the ghetto. I would say one shouldn't want to build a ghetto, but these measures, if carried through as outlined here, shall automatically drive the Jews into a ghetto."

Did Heydrich give that warning?

A Well, here it says so, yes, but you can see from the following discussion that I say, "Now comes the possible force of Jewish tenants when they come together, and that was the problem -- to get Jewish tenants together in the same building so that difficulties which would otherwise occur could be avoided.

Q You have omitted that Funk also remarked at this point that "Jews will have to move quite close together. Every one will have to stand up for the next fellow. The individual alone will starve."

Do you find that?

A Yes, but in a different part of these minutes you will find very clearly, "One cannot let the Jews starve and therefore the necessary measures must be taken."

Q Toward the close of that part of that meeting you used these words, didn't you?

"I shall close the meeting this way: That German Jewry shall as a punishment for their abominable," and so forth and so forth, "have to make a contribution of one billion. That will work. The pigs won't commit another

murder. Incidentally, I would like to say again that I wouldn't like to be a Jew in Germany."

A That was correct, yes.

Q Were you joking about that too?

A I have told you exactly how it came to the fine of one billion.

Q You have pointed out that the chauffuers of gauleiters must be stopped from getting anything out of the Aryanization of the Jewish property, right?

A Yes.

Q We will now take up the subject of art.

I call your attention to Document 141-PS, U.S.A. 308. That is the order establishing priorities on the claim for Jewish art property. Do you recall that?

A It has been submitted several times and I have spoken about it in detail the other day.

Q The order was issued just as it appears on its face, was it not?

A Yes indeed. I underlined that.

Q In paragraph 5 reference is made to art objects that are suited to be given to the French museums, which will be auctioned off, and the profit from this auction will be given to the French state for the benefit of those bereaved by the war. That, I understand, you have never done?

A I haven't said that it had ever been done. That was just my opinion, my intention in that decree.

Q Well, I am asking you if it ever has been done.

A As far as paragraph 5 is concerned, I cannot say. I can only refer to the plans which can be seen in paragraph 2, the things that I pointed out, and as I have said the other day that this amount was kept in readiness and that I always asked on which account it should be deposited, and I had estimates made of each individual art object, of all those which should go into the collection which I desire to establish.

H0088-0049

H0088 - 0050

Q Where was this amount kept?

A In my bank, under the name "Art Account".

Q In what bank?

A I could not say that for sure now. There were several banks in which accounts were kept. In which bank that account "Art Account" was, I could not say. I would have to have the documentary material for that here.

Q In the several interrogations you have never been able to point out where that fund is, have you?

A I cannot say, but if you would question my secretary who knew about all the funds, she could tell you quite accurately.

Q This order, 141-PS, was carried out by the Rosenberg organization, wasn't it?

A Yes.

Q Did you know who carried it out, who actually was there? Did you know Turner?

A I did not understand the name.

Q Did you know Mr. Turner?

A I know a Turner, but he has nothing to do with the Einsatzstab, the Special Staff Rosenberg. As far as I know, he was in Yugoslavia.

Q Wasn't Staatsrat Turner in Paris in connection with the art collections?

A I repeat again -- you said Tourner, T-o-u-r-n-e-r or Koerner, K-o-e-r-n-e-r?

Q Turner.

A Koerner?

Q T-u-r-n-e-r.

A Turner -- I don't know that he would have had anything to do with the Einsatzstab Rosenberg.

Q But you knew him, did you not?

A Yes.

Q And did you know a Dr. Bunjes?

A Bunjes, B-u-n-j-e-s, yes.

Q You knew him?

A Yes.

H0088 - 0051

Q He had to do with captured or confiscated Jewish art, did he not?

A I don't believe that Dr. Bunjes had anything to do with that. He was active in a different field of art. The Einsatzstab Rosenberg and several officials of the military administration had to do with it.

Q I will ask to have you shown, so that you can follow me, to refresh your recollection, Document 2523-PS, USA-783, a letter from Dr. Bunjes, and ask you if this refreshes your recollection of certain events.

"On Tuesday, the 4th of February 1941 at 1830 o'clock, I was ordered for the first time to report to the Reichsmarshal at the Quai d'Orsay. Field Commander von Behr of the Special Purpose Staff Rosenberg was present at the report. It is, of course, difficult to describe in words the cordial tone in which the conversationwas held."

Do you recall such a meeting.

A No, it would not have been so important that I should have remember it, but I will not deny it, of course.

Q We'll see if this refreshes your recollection:

"The Reichsmarshal dropped the subject of Turner for the time being and asked for the report of the present state of the seizure of Jewish art property in the occupied western territories. On this occasion he gave Mr. von Behr the photographs of these objects of art that the Fuehrer wants to bring into his possession. In addition, he gave Mr. von Behr the photographs of these objects of art that the Reichsmarshal wants to acquire for himself."

A I cannot follow here.

Q You mean you do not find these words, or you do not recall the events?

A No, I haven't found the passage yet, and I would like to have a little time to see the connection in this letter which wasneither written by me nor addressed to me.

Q Let me call your attention to a further paragraph of it and see if it doesn't refresh your recollection:

"On Wednesday, 5 February 1941, I was ordered to the Joue de Pomme by the Reichsmarshal. At 1500 o'clock, The Reichsmarshal, accompanied

H0088 - 0052

by General Hannesse, Mr. Angerer, and Mr. Hofer, visited the exhibit of Jewish art treasures newly set up there."

A Yes, I have stated before that at Joue de Pomme I selected the art treasures which were exhibited there, that's right.

Q That's right; now we are getting there.

"Then, with myself as his guide, the Reichsmarshal inspected the exhibited art treasures and made a selection of those works of art which were to go to the Fuehrer and those which were to be placed in his own collection.

"During this confidential conversation, I again called

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the Reichsmarshal's attention to the fact that a note of protest had been received from the French government against the activity of the Einsatzstab Rosenberg, with reference to the Hague Rules on Land Warefare recognized by Germany at the armistice of Compiegne, and I pointed out that General von Stuelpnagel's interpretation of the manner in which the confiscated Jewish art treasures are to be treated was apparently contrary to the Reichsmarshal's interpretation. " Thereupon, the Reichsmarshal asked for a detailed explanation and gave the following orders;

"First, my orders are decisive. You will act directly according to my orders. The art objects collected in the Joue de Pomme are to be loaded into a special train immediately and taken to Germany on orders of the Reichsmarshal. Those art objects which are to go into the Fuehrer's possession and those art objects which the Reichsmarshal claims for himself will be loadedinto two railroad cars which will be attached to the Reichsmarshal's special train, and upon his departure for Germany, at the beginning of next week, will be taken along to Berlin. Feldfuehrer von Behr will accompany the Reichsmarshal in his special train on the trip to Berlin.

"When I made the objection that the jurists would probably be of a different opinion and that protests would most likely be made by the military commander in France, the Reichsmarshal answered, saying verbatim as follows, 'Dear Bunjes, let me worry about that; I am the highest jurist in the state.'

The Reichsmarshal promised to send from his headquarters by courier to the Chief of the Paris Military Administrative District on Thursday, February 6, the written order for the transfer to Germany of the confiscated Jewish art treasures."

Now, does that refresh your recollection?

A It is not at all in contradiction to what I have said with respect to the art treasures with the exception of one sentence, the notion which is expressed here, is the fact that it alleges that I said that I was the highest jurist in the State because that, thank God, I was not, That is an expression which Mr. Bunjes used, and I cannot be held responsble for each expression which anyone may have made to somebody else without my having any possibility of correcting it. The rest, however, is according

H0088 - 0054

to the explanation which I gave the other day.

Q Now, the art then was loaded in the cars and shipped to Berlin, was it not?

A In part, yes.

Q I now call your attention to, and ask to have you shown, Document 104-PS. USA-784. Now, I ask you to refresh your recollection by following this report to the Fuehrer with me, and tell me if this conforms with your testimony:

"I report the arrival"--

A (Interposing) I would like to point out that this report did not come from me.

Q I understand that. I am asking if it is right or wrong.

"I report the arrival of the principal shipment of ownerless Jewish cultural property in the salvage location Neuschwanstein by special train on Saturday the 15th of this month. It was secured by my Staff for Special Purposes, Einsatzstab, in Paris. The special train, arranged for by Reichsmarshal Hermann Goering, comprised 25 express baggage cars filled with the most valuable paintings, furniture, Gobelins, works of artistic craftsmanship and ornaments. The shipment consisted of the most important parts of the collections of Rothschild, Seligman" -- and half a dozen others.

Have you found that and is it correct?

A Whether this is correct I could not say because the report did not come from me. The only thing that I remember is that I had been asked by the Einsatzstab to take care to see to it that they should have sufficient special cars, box cars, in order to ship the art treasures, since Joue de Pomme was not at all a safe place in case of bombing attacts, nor was Neuschwanstein, south of Munich, and they were the objects which went to the Fuehrer.

I should like, however, to emphasize the next sentence of this document, which was not written by me, and that goes as follows:

" The action of confiscation by my Einsatzstab, which took place on the basis of your order, my Fuehrer, started in October 1940 in Paris."

That proves again ahat I have said in my previous statements.

H0088 - 0055

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That proves again what I have said in my previous statements.

H0088-0056

Q And would you care to read further?

A You mean "Outside of this special train, already before the main art objects which the Reichsmarshal had selected, mainly from the collection of the Rothschilds, had been brought in two special cars to Munich and were there put into the air raid shelter of the Fuehrer Building." Those were the ones that at first I had selected following the wish of the Fuehrer, the most precious objects which should have been sent to the air raid shelter, and they have nothing to do with mine, but I did not dispute the fact. I have explained it in detail.

Q When you were examined by the American Foreign Assets Commission, you estimated your art objects as having a value at the time you turned them over to the government of fifty million reichsmark, as I recall it.

A That is not correct in this way. That commission wanted an estimate. There was a strong discussion going back and forth about it. I told that commission that I could not assess the value because I did not have the objects in front of me and no list; and I could not remember them well enough; furthermore, that it depended also on the market in general and in some cases there is the amateur value and in other cases the trade value. Since I did not see the minutes and especially since in these minutes there were misunderstandings, I can only identify the protocols which I have signed.

Q Well, do you question this fact. "When I gave the news to the Minister of Finance I at that time estimated the value at fifty million marks." Did you say that or did you not?

A I cannot estimate the value. I only told the manner in which my collections, including my own, would be turned over to the state, and since he knew my passion for collecting, I told him that it was quite possible that suddenly something would happen to me and that since I had put my entire private property into these art collections, it could therefore be possible that on the basis of my disposition that the entire collection should become the property of the state, that my family would be deprived of everything and that he should take care to bring about a reasonable balance. That is what I had to say to the Finance Minister, as to which he can testify.

H0088-0057

Q What proportion of your art collection was acquired after 1933?

A I did not understand the question.

Q What proportion of your art collection was acquired after 1933?

A That I could not say in detail--quite a number of pictures and statues.

Q Now, you have claimed that some part of your art collection you bought?

A Yes, of course. Certainly.

Q And in connection with that some inquiry was made into your financial transactions, was there not?

A I do not know. I do not know who made such inquiries.

Q Well, you were asked, were you not, about your receipt of RM 7,276,00 from the Rezza Cigarette Factory?

A No, I was never asked about that.

Q You were never asked about it?

A No, neither about that amount nor about the cigarette factory, nor anything about it.

Q Let me refresh your recollection about that. Did you not tell them and did you not toll Colonel Amen in interrogations that this money was given to you by this cigarette factory and that their back taxes were cancelled?

A No, I denied that their back taxes were ever cancelled. I remember now that the question was put to me in a different connection. The economist brought up a part in the so-called Adolph Hitler Fund, and the distribution of this amount was turned over to me for general cultural tasks.

Q Now, you were interrogated on the 22nd day of December 1945 by the External Assets Branch of the United States Investigation of Cartels and External Assets, were you not?

A May I at first say explicitly that I had been asked whether I would be ready to make any statements about it and was told that these statements have nothing at all to do with this trial and that therefore the presence of my defense counsel would not be necessary. That statement was made definitely and was repeated to me also by the people in charge of the prison, and before the interrogation it was again confirmed that my statements made during it would not be brought in in connection with this trial.

H0088 - 0058

It does notmake any difference to me as much. You may produce them, but I want to say this on account of the method used.

DR. STAHMER: I protest against the use of these statements for the reason that has just been given by the witness. I myself sometime ago--I believe it was around Christmas--was asked by, I believe, the American Treasury whether about questions of property they should hear the defendant, with the definite remark that I did not have to be present at the interrogation because any statement would not be brought up in connection with the trial and would not be used in the course of the trial.

MR. JUSTICE JACKSON: I am not able either to affirm or deny, and therefore I will not pursue this subject further at this time. I do not believe that any stipulation was made that these facts should not be gone into. I was not informed of it, and if there has been, of course, it would be absurd.

Q Now, you were asked about receiving some art objects from Monte Casino

A Yes.

Q I ask you if it is not the fact that an altar statue taken from the Casino abbey was brought and delivered to you and that you expressed great appreciation for it.

A I am glad that I can clarify this affair also. After the monastery of Monte Casino had been completely destroyed by shelling and had been defended by a paratroop division, a delegation arrived one day and brought along a statue entirely without value of some male or female holy person, as a last momento of this destroyed monastery. I thanked the delegation and showed the statue to the curator of my art collection, and he also considered the statue entirely without value. The box remained in the monastery.

THE PRESIDENT: I do not think this is coming through sufficiently loud for the shorthand writers to hear.

A The rest of the art treasures from Monte Casino, according to my knowledge, has been evacuated following my order. A large part, especially of those objects which belonged to the abbey of the monastery, was sent to the Vatican. I have to assume this from the fact that the abbey of the monastery

H0088 - 0059

sent me and my division a personal letter of gratitude, written in Latin, for that action.

Secondly, as far as I remember, those objects from the museum in Naples which had been deposited there at Monte Casino--a large part of those was also taken by us to Venice and there turned over to the Italian government.

H0088-0060

Very few pictures and statues were brought to Berlin, and there they were turned over to me. On the very same day I presented the list to the Fuehrer, and a short time later, from my air raid shelter, also the objects, so that he, the Fuehrer, could negotiate about them with Mussolini. Of these objects I did not keep a single one for my collection. If my troops would not have intervened, then these objects of art which had been stored in Monte Cassino and belonged to the monastery would have been destroyed by the shelling and bombing of the enemy, that is to say, the American-British enemy, without any trace. In this way they are still in existence.

Q Now, you say of no value--no substantial value?

A That is my conviction today still, and I depended, first of all, on the judgment of my expert. Therefore, I have never taken that statue out of the box. It was uninteresting for me. And then, again, I wanted to say something nice to the men who brought it.

Q The labor shortage in the Reich was becoming acute by November of 1941, was it not?

A That is correct.

Q And you yourself gave the directives for the employment of Russian prisoners of war, did you not?

A Employment for what?

Q For war industry--tanks, artillery pieces, airplane parts.

A That is correct.

Q That was at the conference of the 7th of November, 1941, that you gave that order, was it not?

A In what conference that was I could not tell you, but generally I issued these directives.

Q And the directive was that Russian prisoners of war should be selected in collecting camps beyond the Reich border, and should be transported as rapidly as possible and employed in the following order of priority: mining, railroad maintenance, war industry--tanks, artillery pieces, airplane parts, agriculture, building industry, etc. You gave that order, did you not?

H0088 - 0061

A I must have given that order; otherwise, I cannot remember it.

THE PRESIDENT: What was the number of that, Mr. Jackson?

Q I ask to have you shown document No. 1193-PS.

A I haven't seen that document yet.

(A document was handed to the witness.)

This document, which you have just mentioned --

Q I did not get the answer.

A Excuse me. I have just received the document about the use of Soviet Russians. Is that the one you meant?

Q That is right. I call your attention to the fact that it is referred to as an annex in the letter signed by Goering.

A I just wanted to point that out. This document was not signed by me, but by Koerner. But that does not make any difference as far as my responsibility is concerned.

Q Well, you do not question that on the 7th day of November, 1941, you gave the order, as Koerner reports it, do you, in the document referred to as 1193-PS?

A I have only said that it was not signed by me but by Koerner, and here even by a still younger official, a regierungsrat, and that I only wanted to state that this was my field of competence. Therefore, I assume responsibility. But I have not read it yet. This deals with directives and outlines which I have given generally, and which were worked out by the department concerned afterwards. And, of course, not every word or every sentence, such as it is written here, could have been dictated by myself, but that does not change or alter the fact that I assume the responsibility for it, even if I did not know it in detail or the formulation may have been a different one if I had written it. But the general directives were given by me, and, accordingly, worked out by the other instances.

Q You also gave the order, did you not, that 100,000 men were to be taken from among the French prisoners of war not yet employed in armament industry, and are to be assigned to the armament industry, airplane industry. Gaps in manpower resulting therefrom will be

H0088 - 0062

filled by Soviet prisoners of war. The transfer of the above-named French prisoners of war is to be accomplished by October the 1st. You gave that order, did you not?

A That is correct. Here we deal primarily with the fact that a large part of French expert workers which were in captivity were prisoners of war and were made free workers under the condition that they would work in the German armament industry, and the shortages which occurred at their previous places of work, where they had worked as prisoners of war, should be filled by Russian prisoners of war, because I considered it unreasonable that qualified experts in industry, for instance, in agriculture or anywhere else should not do the work which was according to their capability. Therefore, I made sure that these people could become free workers instead of prisoners of war if they would consent to that work. These were the decrees, the outlines, which I established.

Q And did you know that there was any forced labor employed in Germany?

A Duty labor, "pflicht arbeit".

Q Did you not testify under interrogation on the 3rd of October, 1945, that "I would like to add something to the last question of the last interrogation. The Colonel asked me if the forced labor program was effective, and I said Yes. There are two remarks I would like to make to that.

"All right.

"I must say that in the results as such it was effective. However, a great number of acts of sabotage did happen, and also treason and espionage.

"Question: But on the whole you would say it was a successful program from the German point of view?

"Answer: Yes. Without this manpower many things could never have been achieved." Did you say that?

A That is a matter of course, because without manpower one cannot do any work.

H0088 - 0063

had been a success. What do you say to that? Did you say that?

A I have said what I did in answering the question whether this manpower was successful. Manpower used was successful; that is correct.

BY MR. JUSTICE JACKSON:

Q Now, you were shown a document, 3700-PS, written by Schacht to you, and you have said that you received it.

A Yes, I remember.

Q Now, you and Schacht were somewhat rivals in the economic field at one period, were you not?

A I explained that the other day, yes; and I explained how far.

Q You wanted his position abolished in the event of war and he wanted your position abolished in event of war, did he not -- your economic position.

A Not quite. There were the same functions of authority at the same time -- two different persons, and that in the long run was incompatible. It simply had to be made clear which one of the two should have the authority, and especially in the case of a mobilization that would have been very urgent.

Q You, in testifying on the 17th day of October last, as to your relations with Schacht, made this statement, did you not, in reference to your disagreements with Schacht: This I must underline. Schacht always tried to slide out and up and achieve yet a new position, whilst all the other ministers cooperated absolutely. Did you say that?

A Not exactly as it is there. I wanted to emphasize that, contrary to the other ministers who followed my directives for the Four Year Plan etc. without difficulty, I had certain difficulties with Schacht, which I have explained already, on the basis of his being a very strong personality.

Q The question was whether you made that statement in substance or in those words?

A Not exactly in these words, but such as I have just explained, in substance.

Q Now, do you have in mind Schacht's letter to you, 3700-PS?

A Yes, I have read it here a short time ago.

H0088-0064

Q And in that letter Schacht said this to you, did he not, referring to 3700-PS? "It may be militarily necessary"-- Do you want to follow it?

(A document was handed to the witness).

"It may be militarily necessary to conscript the 15-year olds, but it will be a heavy burden on the fighting morale of the German people. The facts as the German people see them are as follows:

"First, the original promise of a short war has not been fulfilled.

"Second, the promised quick victory over England by the air force did not materialize.

" Third, the public statement that Germany would remain free of enemy air raids has not been fulfilled.

"Fourth, the repeated announcements that the Russian resistance was definitely broken have been proved to be untrue.

"Fifth, Allied supplies of arms to Russia, and the manpower reserves of Russia have, on the contrary, been sufficient to bring continuous heavy counter-attacks against our Eastern Front.

"Sixth, the original victorious advance into Egypt has been halted after repeated attempts.

"Seventh, the landing of the Allies in North and West Africa, declared impossible, has, nevertheless, been accomplished.

"Eigth, the extremely large amount of shipping space which was required for this landing has shown that our U-boats, in spite of their great successes, did not suffice to prevent this moment. In addition, any person of German extraction can see the reductions in the civilian supply, in the traffic, in armaments, and in the availability of manpower.

"The conscription of the 15-year olds will increase the doubts concerning the termination of this war."

Can you fix any more definitely than you have done the date when you received that letter?

A I can only say again and again that I can see here the 3rd of November, but the year is missing. If I would get a copy where the year

H0088 - 0065

could be seen I could answer it more clearly. I have said the other day that I assume, according to the events mentioned, that that must be either November 1944 or November 1943, but, unfortunately, that is not indicated here. I can only read 3rd of November. The year is missing.

H0088 - 0066

Q Do you know when Schacht was sent to the concentration camp? Do you know the date of that?

A Not exactly, but now that you remind me of that, I can sy that this letter certainly was not written in 1944 because in November 1944, I believe Mr. Schacht was already in the concentration camp; consequently, this letter must date back to November 1943.

Q And he was sent to the concentration camp shortly after dispatching that letter to you, wasn't he?

A No, that is not correct.

Q How much longer was he at large?

A The letter is of the 3rd November 1943, as we have just found. I had heard about the arrest of Schacht after the attempt on the life of the Fuehrer and after my illness of a few days, after I returned, that is to say, in September 1944. A connection between this letter and his arrest does not exist in the least because when I asked about his arrest, I was told definitely on the basis of connections with the 20th July 1944.

Q Did you make an agreement, as Supreme Commander of the Air Force, with the Reichsfuehrer SS, the Youth Fuehrer of the German Reich, and the Reichsminister for Occupied Eastern Territories, about the recruiting of youthful Russians, Ukrainians, White Russians, Lithuanians and Tartars between the ages of 15 and 20? Did you come to some agreement with Himmler and Rosenber about that?

A Whether I personally may have concluded such an agreement, I don't think so. My office, however, that is quite possible and even probable that it did it.

Q And you have testified yesterday or the day before -- I think Friday -- as follows: Let me refresh your recollection about the questions of confiscatic "Now, about the question of the confiscation of State property and it was only such property that was confiscated. As far as I know, yes, private property is mentioned in the official report; so far as the winter of 1941 and 1942, there might have been in the matter of furs or perhaps fur boots and some soldiers took some of these smaller articles from the people, but on the whole there was no private property and as such could not be confiscated."

H0088-0067

And I think you also said that you never took anything, down to the last screw and bolt, when you were in occupation of foreign territory. Do you recall that testimony?

A Quite exactly.

Q Do you still stand on it?

A Of course.

Q I ask to have you shown a document EC 317. Now, that is a secret command matter, is it not, dated the 7th of September 1943. Is that right?

A I have here a letter before me of the 21 February 1944.

Q Then you have the wrong exhibit -- EC 317. Page 3.

A Yes, indeed; page 3.

Q This letter of transmittal we will not bother about. Your secret command matter is dated the 7 September 1943, is it not?

A That is correct.

Q And it reads as follows: "Concerning the evacuation of the harvested crops and the destruction of the means of production in the agricultural and food economy in parts of the occupied territories; by direction of the Fuehrer, I give the following order:

"First. In the territories east of the line fixed by the highest military command, the following measures are to be taken gradually, according to the military situation at the time. The measures are to be determined by the O.B. (Oberbefehlshaber) of the army groups:

"(1) All agricultural products, means of production, and machines of enterprises serving the agricultural and food economy are to be transported away.

"(2) The factories serving the food economy, both in the field of production and of processing, are to be destroyed.

"(3) The basis of agricultural production, especially the records and establishments, storage plants, etc., of the organizations charged with seizing the food economy, are to be destroyed.

"(4) The population engaged in the agricultural and food economy is to be transported into the territory west of the fixed line."

H0088-0068

Right?

A Absolutely correct; but I want to state in connection with it, that we are dealing here with purely military measures in a retreat and for these four points, with respect to these four points, I have emphasized the other day that a great number of agricultural machines had been brought to Russia by us. After the Russians, when they retreated, destroyed everything, we had all the less military reason to leave our machines which we had brought there and established there and to let them fall into their hands not destroyed. This is an order of urgency and for military reasons which had been issued in the case of a retreat and which was executed in the same way as before in the reverse case.

Q And it was signed by you?

A Yes, it bears my signature, this order.

MR: JUSTICE JACKSON: I am about to go into a different subject, may it please your Honor.

THE PRESIDENT: Yes, we will adjourn now.

(A recess was taken until 1525 hours.)

H0088 - 0069

Q I will ask that the witness be shown a document, 3786-PS (U.S.A. 787) of which there are no extra copies available because it came to us so late. I will ask you to examine that and tell me whether you recall the meeting to which those minutes refer?

A We are here apparently concerned with a report dealing with a situation which arose daily with the Fuehrer, perhaps once or twice a day. Since a situation occurred once or twice daily, I cannot, with any accuracy, make any statement without first having read the report. I cannot recall the report of 27 January 1945 for I experienced any number of these situations during the course of the war.

Q I shall call your attention to specific incidents in it. The minutes indicate that the Fuehrer, yourself, Keitel and Jodl were present, were they not?

A Yes, it's according to the notes.

Q And I will call your attention to page 31 and ask you to follow with me the notes and see if it refreshes your recollection. Now, this relates to 10,000 imprisoned air force officers. I quote what is attributed to you.

"Goering: Dear Chief, there are 10,000 imprisoned air force officers. The commander of the replacement army is in charge of guarding. The transportation forces are supposedly non-available. The thought was expressed if one should not leave the prisoners to the Soviet Russian Armies, they would receive 10,000 fliers.

"The Fuehrer: Why were they not shipped away earlier. This is an unheard of neglect.

"Goering: That is the business of the commander of the RTA. We have nothing to do with it. I can only report it.

"The Fuehrer: They must be removed and if they have to march in the dirt the Volkssturm Fegelein must be called in. Whoever tries to escape will be shot. It must be done by all means.

"Goering: That is, from Sagan, there are 10,000 men.

"Gluecke: When transferring, the 4th Armored Division moved out completely, also the 227th Division, and also the remainder of the 32nd Division is now moving. The next in line is HQ of the 3rd SS Panzer Corps.

H0088-0070

During the night, from today to tomorrow, and from tomorrow to after tomorrow. The Division Niederland has already pulled out. Parts of the Division Nordland have also been pulled out from the front lines.

"Fuehrer: Are you getting replacements now? Are they already on the move?

"Goering: Fegelein took care of that. He has already ordered that they should be reinforced.

"The Fuehrer: Is it absolutely clear that the army group Weichsel has nothing, for the time being, except the Corps Maehren, and the one group, and it is at the River Weichsel? This is to be worked first. It will come from here and partly from Germany. It must be done, nevertheless.

"Goering: How many box cars areneeded for 10,000 men?

"The Fuehrer: If we transport them according to German standards, then we need at least 20 freight trains for 10,000 men. If we transport them according to Russian standards, we need 5 or 3.

"Goering: Take their pants and boots off so that they cannot run in the snow."

Do you recall that incident?

A I believe that I remember this incident but vaguely. After I have given the answer I would like to qualify and give my opinion of the value of this document. I understood that this document just now arrived, but I have already been interrogated with respect to this document long before the beginning of the proceedings, and at that time I pointed out that the stenographic record of the situation -- two stenographers were active and the situation often took place over a period of 4 or 5 hours -- had to be worked over or gone over afterwards and that frequently, because of the presence of many people, inaccuracies occurred in translations that expressions used by one were accredited to another in the minutes. For that reason, at that time I mentioned the fact that I not only did not remember this expression, but that according to my conviction and view, I have never made this expression. We were concerned solely with the making ready of freight trains for transporting.

H0088-0071

Q Well, I must say that you were interrogated with reference to the incident, but not with reference to these notes which were not transcribed.

A In respect to the writing down and this incident, it was emphasized that we were concerned with a stenotype record of this report and I already uttered my opinion at that time in a light manner, but it was not submitted to me. But that, of course, is correct.

Q Not stenotype, but stenographic.

You are also referred to page 35. I call your attention to this and ask you, is it attributed to you mistakenly?

"Goering: The 10,000 prisoners in Sagan should be transported away by Obergruppenfuehrer Juettner." Perhaps I do not pronounce the word as you would.

"The Fuehrer: These prisoners must be removed by all available means.

H0088 - 0072

Volkstrun must be employed with the more energetic people. All who attempt to flee will be shot.

"Fegelein: We have a man for that who guards the concentration camp, This is Gruppenfuehrer Gluecks. He must do the job."

Did that occur?

A That I cannot say. I have already testified that BDE had to take over the transporting away of these prisoners. We were not concerned with it, and what arguments or clarifications the other gentlemen made in the conversation I cannot testify completely at this point. We are concerned with the question of whether these 10.000 men were to be surrendered or transported off.

Q I will ask you a question or two about the Warsaw bombing. Was it known to you that on the 3rd of September, the house of the Ambassador of the United States, situated some 17 Kilometers out of Warsaw, was bombed by the German Air Force?

A No, that is unknown to me.

Q Your Air Force took a good many pictures of the Polish vilages and of Warsaw and used them for distribution among the German people, did'nt they?

A That is possible, but I was not concerned with the vilages, In any event, the Luftwaffe did not distribute pictures to the German people. It is possible that pictures taken by the Luftwaffe might have gone into the German press, but distribution, in the sense of the Luftwaffe distributing photographs or forms of leaflets, that never took place.

Q The Luftwaffe did take the pictures for the purpose of determining the sfficiency of its hits, did it not?

A The Luftwaffe took pictures before the target had been attached and after the target had been attached to determine whether the target had actually been hit.

H0088 - 0073

Q I ask to have you shown five photographs and ask you if those are not photographs taken by the Luftwaffe, following the attack on Poland.

(Witness shown photographs)

A To answer your first question, whether the pictures had actually been taken by the German Luftwaffe, I regret I cannot give you a positive answer for there are no surroundings shown and there is no identification that these were made by the German Luftwaffe. Four out of the five pictures are oblique pictures, as though they had been taken from a church steeple rather than from an airplane, from where only direct vertical pictures could be taken. The picture showing the destruction of parts of Warsaw might be technically a vertical picture and might be possibly considered as such. The date is lacking and none of the pictures give any proof that they come from the Luftwaffe. And too, I would like to mention, if they had been taken by the Luftwaffe -- I will assume that is so, so that all possible questions will be facilitated.

Q You say you will assume they were taken by the Luftwaffe?

A Yes, even though I doubt it.

Q I do not want you to give away anything here. If you think they were not taken by the Luftwaffe I do not want you to admit it.

A I said there is no proof here as to that fact. I did not take the pictures, I do not know them, they were not submitted to me as Luftwaffe pictures and from the technical point of view if made from a plane, they were made by a private camera in an oblique direction. True aerial pictures as they were made technically by the Air Force were vertical pictures and these are not vertical pictures.

Q Well, we will pass them then and go to something else.

Let us take up Document 638 PS (U.S.A. Exhibit 788) about which you have been interrogated and which, as I recall, you authenticated.

(Witness shown document)

This is the document which was signed by Dr. Jodl and I ask you to follow me.

"From the Reichsmarshal's plans of 24-9-42.

"First: The Reichsmarshal is looking for daring fellows who will be employed in the east as Sonderkommandos (special purpose) and who will be able

H0088 - 0074

to carry out the task of creating confusion behind the lines. They are to be formed into bands under leadership and with interpreters alloted to them. For this purpose the Reichsmarshal is considering convicts who are first offenders, who have committed not particularly heinous offense, for which there is human understanding.

"The Reichsmarshal first of all mentioned persons convicted of poaching. He knew, of course, that the Reichsfuehrer SS had picked out the so-called poachers and they were already in his hands. He requests, however, that the question be re-examined. The only suitable men are those with a passion for hunting, who have poached for love of the trophy, not men who have laid snares and traps. The Reichsmarshal also mentioned fanatical members of smuggling gangs, who take part in gun-battles on the frontiers and whose passion it is to outwit the customs at the risk of their own lives, but not men who attempt to bring articles over the frontier in an express train by similar means.

"The Reichsmarshal leaves it to us to consider whether still another category of convicts can be assigned to these bands or pursuit commands.

"In the regions assigned for their operations, these bands, whose first task should be to destroy the communications of the partisan groups, could murder, burn and ravish; in Germany they would once again come under strict supervision.

"(Signed by) Dr. Jodl, 24-2-42."

Do you wish to make an explanation of that document to the Tribunal?

A Yes, with the same explanation which I gave at that time. The first two paragraphs show definitely and without objection that I wanted only those people who had committed no offenses against honor but first of all poachers and we differentiate between the poacher who has a passion for hunting and whose who wish to steal solely.

I differentiated amongst smugglers, between those who personally act — who show a certain passion, and those who do it for less worthy causes.

These first two paragraphs show that I did not intend or wish to use criminals of any type and that is why I contradicted the last paragraph in the strongest language that I might have those intentions. We are not here concerned with minutes but with notes of an official with whom I talked. If he actually heard these words from me he would have to attest to the correctness of these words and I underline this strongly as being my view. At that time I mentioned

H0088 - 0075

the concept of violation which I always punished with death even if members of hostile states were concerned and I denied and refused that expression and I again point out that the main paragraphs are to the utmost a contradiction of the last remark because if it had been a matter of indifference to me I could have selected criminals. Then, I expressed and established above, that their main task behind the lines was to be destruction activities, to disrupt communications or railways and lastly, the whole thing never did take place.

Q You objected to the word "ravish" which had been translated the first time "rape" and that is the only objection you made to this document when it was presented to you. Is that not correct?

A No, it is not correct that way. I say this because it is a most significant concept which contradicts my opinion and view of right for even after the taking over of power I had a strengthening or a sharpening in this direction and I wanted to show that this entire latter paragraph had not and could not have been uttered by me. I refuse to accept this statement. I gladly will take responsibility for even the most serious things which I have done but this utterance I refuse to acknowledge and I reject it completely and utterly.

Q Who is the signer of this document?

A Dr. Jodl.

Q Yes -- you knew him?

A I knew him slightly. I saw him at this conference.

Q He was present at the conference?

A I had him come to tell him that I wished this type of people.

Q Now, you dealt in economic matters with the various occupied countries through Reichskommissars?

A I testified the other day that the various Reichskommissars had to follow my economic principles.

Q And were to report to you on economic matters?

A Not about all of them, only insofar as they coincided with my principles or touched upon my principles.

Q And who was your Reichskommissar in Poland?

A Reichskommissar in Bland -- there was none. There was a General Governo and he was Dr. Frank.

Q And who was the Reichskommissar in the Netherlands?

H0088 - 0076

A Reichskommissar for Holland was Dr. Seyss-Inquart.

Q Who was the Reichskommissar for Norway?

A In Norway the Gauleiter Terboven was Reichskommissar.

Q Terboven -- he was also a Gauleiter you say?

A He was Gauleiter at Essen.

Q You appointed him to Norway or attained his appointment?

A I did not appoint him for Norway because that was beyond my jurisdiction nor did I have him appointed. I did not contradict his appointment in any way but I considered him competent for the position of Reichskommissar.

H0088 - 0077

Q And he was there from 1:40 until 1:45.

A I believe that is correct.

Q Now, I will ask to have you shown Document R-134, communication from Terboven to you.

(The document was handed to the witness).

That is a communication of the 1st of May, 1942, is it not?

A I noted the date, yes.

Q And that reports to you as follows, does it not -- it is addressed to you as Reichsmarshall, "My esteemed Reichsmarshall", is that right?

A Yes.

Q Omitting the first paragraph, unless you care to give it, "Several days ago on an island west of Bergen we have flushed out a Norwegian sabotage unit which was trained by the Secret Service, and have found that during this, extensive stores of sabotage instruments, some of them of a new kind, among which poison and bacteria can probably be found, and which so far as they are known have been forwarded to the Reich Security Main Office for closer examination. Besides other tasks, this sabotage unit was to begin with their sabotage work with the explosive devices of which a sample is available on Sola and Herdla. This can be constructed from fine written directives. Since it must be assumed that similar actions are under way on air fields of the remaining European coast, and assuming that a means of sabotage actually unknown until now is in question here, I forward it to you by the fastest means in order to bive you the opportunity to be sure to issue the appropriate warning order. Unfortunately, two especially deserving officers of the Security Police were killed in the fight against the sabotage unit. We buried them this morning at about 1000 hours in the Heroes' Cemetery in Bergen. On the same day and at the same hour eighteen Norwegians were shot on my order. These had been captured some time previously in the attempt to go to England illegally. Also, on the same day, the entire community which granted a hiding place to the sabotage unit was burned down and the population was deported. All males were sent to a German concentration camp without their families receiving any notification about it. The women were sent to a

H0088 - 0078

female forced-labor camp in Norway and the children not capable of working to a children's home. Heil Hitler! Yours obediently, Terboven." Is that correct?

A It says so in the letter, of which I have just seen a copy.

Q Terboven remained after that report until 1945, didn't he?

A That's correct.

Q Now, later in the same year, 1942, you adopted very similar means to those reported by Terboven to you, did you not?

A I did not understand the question.

Q Well, you adopted later in the same year the same means as Terboven, didn't you, in substance?

A I -- where?

Q Well, I will ask that you be shown Document 1742-PS.

(Document U.S.A. 789, handed to the witness).

Now, this is a decree of October, 1942, by Goering. I ask you to follow me:

"Simultaneously with the intensified combatting of gang activity ordered by the Fuehrer and the cleaning up of the hinterland, in particular that behind the Army Group Middle, I request that the following aspects are taken into consideration and that the deductions drawn therefrom are put into practice:

"One, during the combatting of the Underground and the combing through of the areas contaminated by them, all available cattle stock there must simultaneously be driven off to safe areas. Food supplies are to be evacuated and protected similarly, so that there will be no more accessible to the bands.

"Second, all masculine and feminine labor which can be considered for some kind of employment must be seized by force and transported to the plenipotentiary, chef, of the labor exchange, who will then employ them in safe areas of the hinterland or at home. The accommodation of the children in the hinterland camps is to be regulated separately."

Is that right?

A Absolutely. We were concerned with those areas of bands, and no man could demand of me that I leave foodstuffs and cattle for the bands who harrassed us so tremendously and

H0088-0079

bands -- those people who might have been used if band activity had to be taken into regions which were assured us and had to be used for manpower. I would like to emphasize that this is an absolute necessity of life, for the security of the fighting forces. But I would like to emphasize again that you said I decreed the same which you read from the letter of Terboven. I did not ask villages to be fired. I did not ask for the shooting of hostages. We are concerned with two diametrically opposed matters.

Q You simply meant as to men and women and children, and moved them out.

By May of 1944 your problem in the loss of fighter aircraft and fighter personnel was becoming serious?

A Yes.

Q On the 19th of May, 1944, you had a conference in your office, on the subject of fighter aircraft and the losses of fighter personnel, did you not?

A Yes.

Q And you have been shown the minutes of that meeting and authenticated them, your interrogations?

A It is not minutes of the conference. It is a summary of a meeting which took place in two days and it is summarized in just a few sentences.

Q I will ask to have you shown Document L-166. It is entitled, "Most Secret Document," isn't it?

A That is correct.

Q And it is also entitled, "Minutes of conference on fighter aircraft with the Reichsmarshal on the 15th and 16th of May, 1944," that is correct, too, is it not?

A No, they are notices as to a conversation, about fighter aircraft discussion.

Q Notices, you translate it notices?

A Notes. Notes of conference on fighter aircraft. Lasting two days.

Q And at first General Gallant described in detail the situation regarding fighter personnel, that took place, didn't he, and reviewed the losses?

A Yes.

Q And reviewed the losses?

A Yes.

Q And then he reviewed at some length under Item 2, "Remedial Measures," is that right?

H0088-0080

A According to the notes, yes, but whether that actually took place I cannot say.

Q This conference took place, didn't it?

A Absolutely, yes. For two days.

Q And under Item 3 General Gallant made certain proposals, did he not?

A Yes.

Q And then after considerable discussion General Schmidt made certain proposals, Items 12 and 13, is that right?

A It must have been so. It is so according to the notes.

Q You recommended a conference between the chief of the General Staff and as the chief of artillery as soon as possible, did you not?

A Yes.

Q And General Schmidt's recommendations and requests appear in Item 14 and 15 and 16 and 17 and 18?

A Yes.

Q Then you decided, "The Reichsmarshal decides that only the three groups of the fighter squadrons can remain in the rank by the drafting of those pilots and planes operationally fit in accordance with orders already given." That occurred, did it not?

A Yes, operationally.

Q Then "the Reichsmarshal wishes the testing of defense and dispersal measures on low level attack on air fields causing considerable loss in personnel and material." No. 19. That occurred, did it not?

A Yes.

Q Item 20 reads, "The Reichsmarshal will propose to the Fuehrer that American and English crews who shoot indiscriminately at times moving civilian planes or parachuting soldiers will be shot immediately on the scene of action." Have I correctly read that?

A It says so here. And I objected at once at that time that this was not correct; from the whole connection of these notes, 1921, this passage has no connection, but beyond that the expression "parachuting soldiers" is entirely misleading and is not properly used.

I contemplated for a long time as to how this expression

H0088 - 0081

got into the notes, which I never saw, which was, how it could get into a summary of two days' activity, and could explain it only in that I referred or pointed out that we could gather from other testimony that the Fuehrer could have given a directive in this respect, that there must be a mistake, not that the Reichsmarshall will wish to propose to the Fuehrer, but that I suggested that the Fuehrer had any such intention. But about this we would have to talk to and have to consult the author of these notes. No other point is contained in the notes. Even the next point is entirely different. Everything else is in connection and is coherent, but this one point seems to be extraneous.

Q. In all the notes of the two days, this is the one thing that you say is mistaken.

Now I ask to have you shown Document 731-P.S.

(Paper handed to the witness.)

Now, the conference the notes of which I have just read you, was followed within a week by the order, 731-P.S., was it not, the memorandum, 731-P.S., which reads: "The Fuehrer has rendered the following decision in regard to measures to be taken against Anglo-American air crews in special instances: Downed airmen are to be shot without court martial proceedings" --

THE PRESIDENT: Mr. Justice Jackson, didn't you refer to a passage four lines above that, after "Report of the Reichsmarshall"?

MR. JUSTICE JACKSON: I did not, but perhaps for the record it ought to be in full.

"Chief of the Command Staff of the Armed Forces, chief WFST. Please direct drafting of order. W (Warlimont). K (Keitel), deputy chief of staff of the armed forces. Must go to Reichsfuehrer SS. After a report of the Reichsmarshall General Korten makes the following statement: Memorandum" -- I think the next line is not in the original -- "the Fuehrer has rendered the following decision in regard to measures to be taken against Anglo-American air crews in special instances. Downed enemy airmen are to be shot without court martial proceedings in the following instances: One, in the event of the shooting of our own downed airman while they are parachuting to earth; second, in the event of aerial attacks upon German planes which have made emergency

H0088 - 0082

landings and whose crews are in the immediate vicinity; third, in the event of attacks upon railway trains engaged in public transportation; fourth, in the event of low-level aerial attacks upon individual civilians, farmers, workers, single vehicles and so forth."

Now, there is a note on that, "In the event of low-level aerial attacks upon the civilian population, single civilian vehicles and so forth," is there not?

A. Here weapons which were on board -- something is crossed out here and there are some words which I cannot read, which are written up above. Before the expression, "single planes," the word civilian, to point 2, it says; I would have some doubts about that, that the destruction of an emergency -- for the destruction of a plane which has made an emergency landing is not permissible, according to the laws of war. We are concerned with the total complex which took part in these days or weeks and which von Brauchitsch testified to the other day.

Q. That note about that emergency landing is signed by "J," isn't it, which stands for Jodl?

A. Certainly.

MR. JUSTICE JACKSON: I think that is all I care to ask.

There are a number of documents which should be introduced in this connection, and I think it will be best perhaps if we tabulate them and get them ready over the evening and present them in the morning.

THE PRESIDENT:. Certainly, Mr. Justice Jacson, you can put them all in then.

BY SIR DAVID MAXWELL-FYFE:

Q. I want to ask you first some questions about the matter of the Britis Air Force officers who escaped from Stalag Luft 3. Do you remember that you said in giving your evidence that you knew this incident very completely and very minutely? Do you remember saying that?

A. No, that I had received accurate knowledge; not that I had accurate knowledge -- that I received accurate knowledge.

Q. Let me quote your own words, as they were taken down, "I know this incident very completely, very minutely, but it came to my attention unfortunately at a later period

H0088-0083

of time." That is what you said the other day, is that right?

A Yes, that is what I meant, that I knew the incident but heard of it much later.

Q You told the Tribunal that you were on leave at this time, in the last period of March, 1944, is that right?

A Yes, as far as I was on leave in March up until just afew days before Easter.

Q And you said, "As I can prove." I want you to tell the Tribunal the dates of your leave.

A I wish to say again that all of March, according to my definate memory, is part of this leave, and for that proof I would like to mention the people who were present or who accompanied me on this leave.

Q What I want to know is, where you were on leave.

A Here, in the vicinity of Nurnberg.

Q So you were within easy reach of the telephone from the Air Ministry or, indeed, from Breslau, if you were wanted?

A I would have been easily accessible by phone if someone wanted to communicate with me.

Q I want you to help me with regard to one or two other dates of which you have spoken. You say you heard one or two days later about this escape. Do you understand, Witness, that I am asking you not about the shooting for the moment, I want to make it quite clear. Did you mean by that, that you heard about the actual escape one or two days after it happened?

H0088 - 0084

A Yes.

Q Did you hear about it from the office of your adjutant or from your director of operations?

A I heard this through my adjutant. Several other escapes had preceded this one.

Q Yes, that's right. There had been a number of escapes from this camp.

A I can't tell you exactly whether it is from this camp, but several large escapes had taken place. I heard of them through channels to the adjutant.

Q I want you to tell the Tribunal another date: You say that on your return from leave your chief of staff made a communication to you. Who was your chief of staff?

A General Korten was my chief of staff at that time.

Q Can you tell us the date at which he made this communication to you?

A No, I cannot tell you that exactly. About this incident I talked with my chief of staff later. I had heard about it prior to my speaking with him.

Q Who was the first to tell you about it? Was it your chief of staff who told you about the shootings? Do you mean that someone else had told you about the shooting?

A I cannot tell you exactly whether I heard about the shooting from the chief of staff or from other sources, but in any event I talked about this with the chief of staff. I talked about this fact with him.

Q What was the date that you talked about it with your chief of staff?

A I cannot tell you exactly from memory the day. It must have been around Easter.

Q That would be just about the end of March, wouldn't it?

A No. Might have been at the beginning of April or the first half of April.

Q And then you had an interview with Himmler, you have told us?

A Yes, I talked with Himmler about this.

Q Can you fix that?

A Of course I cannot establish this date with certainty. I saw Himmler, and at my first opportunity after I had heard about this incident talked to him about it.

Q So that you can't fix the date in relation to your coming back from leave, or the interview with your chief of staff, or any other date, or Easter?

A Without referring to documents it is absolutely impossible for me to establish the day. I can give you the approximate periodof time; and that I have done.

Q You said the other day that you could prove when you were on leave. Am I to take it that you haven't taken the trouble to look up what your leave dates were?

A I have already said that I was on leave during March. Whether the 26th or the 28th or the 29th of March was the day of my return, that I cannot tell you. For the proof of that you would have to ask the people who accompanied me, who perhaps can fix this date a little more definitely. Idon't recall the fact that I was there in March.

Q Witness, will it be perfectly fair to you if I take the latest of your dates, the 29th of March, to work on?

A It would be more expedient if you were to tell me when Easter was that year, because I do not recall it. It will be easier for me to specify the date, because I do recall that a few days before Easter I returned to Berchtesgaden in order to celebrate this holiday with my family.

Q A few days before Easter you went back to Berchtesgaden?

A Yes.

Q So you had come back from leave some day before that. Before you went to Berchtesgaden you had come back from your March leave?

A Berchtesgaden was the headquarters of the Fuehrer. I returned from my leave to Berchtesgaden, and with my return ended my leave. I returned to duty. The return to Berchtesgaden is identical with the termination of my leave.

Q Well, I can't give you Easter offhand, but I happen to remember Whitsunday was the 28th of May, so that Easter would be early, somewhere about the 5th of April. So that your leave would finish somewhere about the end of March, maybe the 26th or the 29th; that is right, isn't it?

Now, these shootings of these officers went on from the 25th of March to the 13th of April; do you know that?

H0088-0085

H0088 - 0086

A I do not know that exactly as that.

Q You may take that from me, because there is an official report of the shooting, and I want to be quite fair with you. Only forty-nine of these officers were shot on dates, as far as we can fix, the 6th of April, and one was shot either on the 13th of April or later. But the critical period is the end of March, and we may take it you were back from leave by about the 29th of March.

I just want you to tell the Tribunal this was a matter of great importance, wasn't it? Considered a matter of great importance?

A It was a very important matter.

Q General Milch -- I beg his pardon -- Fieldmarshal Milch has said that it was a matter which would require the highest authority, and I think you have said that you know it was Hitler's decision that these officers should be shot; is that so?

A The question did not come through clearly.

Q It was Hitler's decision that these officers should be shot?

A That is correct; and I was notified of it, that it was Hitler's decree.

Q I want you just to remember one thing, that immediately it was published the British Foreign Secretary, Mr. Eden, at once said that Great Britain would demand justice of the perpetrators of these murders; do you remember that?

A The speech to the Lower House given by Eden I cannot remember. I do not know the substance of this speech. I just heard that he spoke in Parliament about this incident.

Q I want you to tell the Tribunal just who the persons in your ministry involved were. I will tell you; I think it would be shorter in the end. If you disagree you can correct me.

The commandant of Stalag Luft 3 was Oberst von Lindeiner of your service, was he not?

A That is completely possible, but I did not know these commandants in particular. There was a court-martial against him for the escape. He was not connected with the shootings.

Q No, but he was commandant of the camp, and I suppose you had to review

and confirm the proceedings of the Zentral Luftwaffen Gericht which convicted him and sentenced him to a year's imprisonment for neglect of duty. That would come to you, wouldn't it? Wouldn't that come to you for review?

A No, only if larger penalties were involved. One year would not come to my attention. But I know, and I would like to certify, that the court procedures were made for him because of neglect of duty.

Q In May of 1943, Inspectorate No. 17 had been interposed between the Luftwaffe and the Department of the OKW, the Kriegsgefangenen Wesen; do you remember that?

A I do not know the details about inspection.

Q I want to remind you of who your own officers were. You understand, witness, that your own officers are involved in this matter. I want to remind you who they were. Was the head of Inspectorate 17 Major General Grosch of the Luftwaffe?

A Major General Grosch is of the Luftwaffe.

Q You told the Tribunal the other day -- I am quoting your own words -- that you knew from information, you knew this incident very completely and very minutely. You are now telling the Tribunal you don't know whether Major General Grosch was head of Inspectorate No. 17 of the Luftwaffe.

A That has no connection with it. I told the high Tribunal that I know the incident of the shooting of these air force officers and was advised of it, but that has no connection with General Grosch and his inspectorate, for he did not participate in the shooting.

Q I will show you that connection in one minute if you will just answer my question. Was Grosch's second in command Oberst Welder; do you remember that?

A The particulars of organization of prisoners of war and the leaders, I do not know that ramification, at least not by heart. I would like to underline again, so that no confusion will take place, that when I said I know this matter I meant that I knew how the decree came about. I know that the people were shot, and I know that for certain. But I did not mean the complete ramification as far as inspectorates are concerned.

Q And did General Grosch, as head of Inspectorate 17, have to report to General Foerster, your director of operations at the Luftwaffe Ministerium?

H0088-0087

H0088 - 0088

A That I cannot tell you without having the diagram of subordination before me. General Foerster was, I believe, chief of the Luftwehr or some similar capacity in the ministry. In itself I did not concern myself with these matters, because they were not practical, strategic, or of armament nature. It is entirely possible that he belonged to this department.

Q I put to you quite shortly, and if you don't know I will leave it for the moment; Did you know that Major General Graevenitz was head of the Defendant Keitel's department, the Kriegsgefangenen Wesen, that dealt with prisoners of war?

A Graevenitz' name I just heard about now, for this division had no direct touch with me. I could not know all of these many military subleaders and their divisions and branches.

Q So I take it that you didn't know Colonel, now General, Westhoff, of the department under von Graevenitz?

A General Westhoff I never saw, and he did not belong to the Luftwaffe.

Q I am not suggesting that von Graevenitz and Westhoff belonged to the Luftwaffe. I wanted to make it clear that I was suggesting they belonged to General Keitel's organization.

A I didn't know either; I did not know their position or rank.

Q Up to that time you still had a considerable influence in the Reich, didn't you?

A In this period of time, no longer. We are concerned with 1944, and at that time not at all.

Q But you were still head of the Luftwaffe and head of the Air Ministry, weren't you?

A Yes, I was that.

Q And you had, as head of the Luftwaffe and head of the Air Ministry, been responsible for six prisoners of war camps for the whole of the war up to that time, hadn't you?

A How many I do not know, but I am responsible for those which belonged to my ministry.

Q To the air force?

A Those which belonged to the Luftwaffe and were subordinate to it.

H0088 - 0089

Q You knew about the general plan for treatment of prisoners of war, which we have had in evidence as the "Aktion Kugel" plan, didn't you?

A No. I knew nothing of this action. I was not advised of it.

Q You were never advised of Aktion Kugel?

A Aktion Kugel was made known to me for the first time here by the document and the expression. Never did an officer of the Luftwaffe ever advise me of such, and I do not believe that any officer was ever transported off. This report was never presented to me, in any event.

Q You know what Aktion Kugel was, that escaped officers and noncommissioned officers, other than British and American, were to behanded over to the police and taken to Mauthausen, where they were shot by the device of having a gun concealed in the measuring equipment when they thought they were getting their prison clothes. You know what Aktion Kugel is, don't you?

A I heard of it here.

H0088 - 0090

Q Are you telling the Tribunal that you didn't know that escaped prisoners of war who were picked up by the police were retained by the police and taken to Mauthausen?

A No, I did not know that. On the contrary, on occasions when escape happened through my camps the escapees were returned by the police to the camps, and this was the first case in which it did not take place completely.

Q But didn't you know that Colonel Welder, as second in command of your ministry's inspectorate, issued a written order a month before this, in February 1944, that prisoners of war picked up by the Luftwaffe should be delivered back to their camp, and prisoners of war picked up by the police should be held by them and no longer counted as being under the protection of the Luftwaffe; didn't you know that?

A No. Please ask this colonel to testify so we can determine whether he ever made a report of that nature to me.

Q Well, of course I can't tell whether your ministry was well run or not. But he certainly issued the order, because he says so himself.

A Then he must say from whom he received this order.

Q I see. Well, he says that he issued this order, and you know as well as I do that prisoners of war is a thing that you have got to be careful about, because you have got a Protecting Power that investigates any complaint, and you never denounced the convention and you had the Protecting Power in these matters all through the war, had you not? That is right, isn't it?

A That is correct. But I just wanted to know who gave him this order, whether he received this order from me. That was my question.

Q Well, he wouldn't get it direct from you. I don't think you had ever met him, had you? He would get it from Lieutenant General Grosch, wouldn't he?

A Then Grosch would have to say whether he had received an order like that from me. I never gave an order like that.

Q I see. So you say that you had never heard -- this was three and a half years after the beginning of the war -- and you had never heard that any escaped prisoners of war were to be handed over to the police. Is that what you ask the Tribunal to believe?

H0088 - 0091

A As far as escaped prisoners of war are concerned, who had committed offenses, these, of course, were turned over to the police, I believe. But because of an attempt at escape, and just because of an attempt at flight they were handed over to the police or to a concentration camp or that an order of that nature was given, I wish to certify that I neither knew of this or that I ever gave an order of this kind.

Q This is my last question: I want to make it quite clear, witness, that I am referring to those who had escaped, who had got away from the confines of the camp and were recaptured by the police. Didn't you know that they were handed over to the police?

A No. Only if they had committed crimes like a murder, and that, of course, took place at times.